121-138

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. 1258.

THE MERCANTILE NATIONAL BANK OF THE CITY OF NEW YORK, APPELLANT,

vs.

THE MAYOR, ALDERMEN AND COMMONALTY OF THE CITY OF NEW YORK, AND GEORGE W. McLEAN, RECEIVER OF TAXES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED OCTOBER 25, 1886.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. 1258.

THE MERCANTILE NATIONAL BANK OF THE CITY OF NEW YORK, APPELLANT,

vs.

THE MAYOR, ALDERMEN AND COMMONALTY OF THE CITY OF NEW YORK, AND GEORGE W. McLEAN, RECEIVER OF TAXES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

INDEX

	Original.	Print.
Subpœna	1	1
Marshal's return	2	1
Bill of complaint	3	2
Appearance for defendants	20	12
Answer	22	12
Replication	30	16
Stipulation as to facts	32	17
Opinion of Judge Wallace	37	20
Stipulation as to facts on final hearing	55	30
Exhibit A—List of corporations whose shares of capital stock are embraced in the sum of $755,018,862, &c	61	33
B—Statement showing personal property of life insurance companies	85	52
C—Statement showing value of stock of trust companies	86	54
Decree	87	54
Consent as to record on appeal	88	55
Prayer for appeal	89	55
Order allowing appeal	90	56
Bond	91	56
Clerk's certificate	94	57

JUDD & DETWEILER, PRINTERS, WASHINGTON.

1 The President of the United States of America to Mayor, Aldermen, and Commonalty of the City of New York
[L. S.] and George W. McLean, receiver of taxes, Greeting:

You are hereby commanded that you and each of you personally appear before the judges of the circuit court of the United States of America for the southern district of New York, in the second circuit court, in equity, on the first Monday of October, A. D. 1885, wherever the said court shall then be, to answer a bill of complaint exhibited against you in the said court by The Mercantile National Bank of the City of New York, and do further and receive what the said court shall have considered in that behalf; and this you are not to omit under the penalty on you and each of you of two hundred and fifty dollars.

Witness Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at the city of New York, on the eleventh day of September, in the year one thousand eight hundred and eighty-five and of the Independence of the United States of America the one hundred and tenth.

TIMOTHY GRIFFITH, *Clerk.*

BROWN & WELLS,
Complainant's Sol'rs.

The defendants are required to enter appearance in the above cause in the clerk's office of this court on or before the first Monday of October, 1885, or the bill will be taken *pro confesso* against them.

T. G., *Clerk.*

2 A copy of the within paper has been this day received at the office of the counsel to the corporation.

Sept., 12, 1885.

E. HENRY LACOMBE,
Counsel to the Corporation.

And at the office of the receiver of taxes.

A. VREDENBERG,
Dep'y Receiver of Taxes.

I hereby certify that I served a copy of this writ upon the within-named defendants, as per above endorsement.

Dated Sept. 12, 1885.

M. T. McMAHON, *U. S. Marshal,*
Per JOHN E. DOWLEY, *Deputy.*

[Endorsed:] U. S. circ't c'r't. Fil. Sept. 14, 1885. Tim'y Griffith, cl'k.

3 *Bill of Complaint.*

United States Circuit Court, Southern District of New York. In Equity.

THE MERCANTILE NATIONAL BANK OF THE CITY OF NEW YORK

vs.

THE MAYOR, ALDERMEN, AND COMMONALTY OF THE CITY OF NEW YORK and GEORGE W. McLEAN, Receiver of Taxes.

To the honorable the judges of the circuit court of the United States for the southern district of New York, sitting in equity:

The Mercantile National Bank of the City of New York, an association organized under the act of the Congress of the United States, approved June 3, 1864, commonly called the "national bank act," and the supplements thereto, which association is located in the city, county, and State of New York, brings this its bill of complaint against The Mayor, Aldermen, and Commonalty of the City of New York, a municipal corporation situated in said State of New York, and George W. McLean, receiver of taxes, an officer of said city, and a resident of said city, county, and State of New York.

And thereupon your orator complains and says—

4 1. That on the second Monday of January, A. D. 1885, and for several months prior thereto, it had a capital of $1,000,000 and a surplus fund of $200,000; that nearly the whole of said capital and surplus fund was, during that period, invested in bonds of the United States of the par value of $949,000, and of a market value and cost largely exceeding said sum; that its shares of stock were each of the par value of $100 and of the number of 10,000, and were then held by 142 persons and corporations, fifty of whom, owning 1,877 shares, were residents of States other than the State of New York, and the remainder residents of the State of New York.

2. And your orator further says that under the laws of the State of New York applicable thereto it was the duty of the proper deputy tax commissioners of said city, between the first Monday of September in the year 1884 and the second Monday of January in the year 1885, to value and assess all taxable property, real and personal, within the said city, and to set down the same in a roll in the form prescribed by law.

3. And your orator further says that the Legislature of the State of New York, on July 1, 1882, passed an act, known as chapter 409, entitled "An act to revise the statutes of this State relating to banks, banking, and trust companies," whereby, in sec. 312, it was provided that—

"The stockholders in every bank or banking association organized under the authority of this State or of the United States shall be assessed and taxed on the value of their shares of stock therein. Said shares shall be included in the valuation of the personal property of such stockholders in the assessment of taxes at the place, city, town, or ward where such bank or banking association is located,

and not elsewhere, whether the said stockholders reside in
5 said place, city, town, or ward, or not; but in the assessment of said shares each stockholder shall be allowed all the deductions and exceptions allowed by law in assessing the value of other taxable personal property owned by individual citizens of this State, and the assessment and taxation shall not be at a greater rate than is made or assessed upon other monied capital in the hands of individual citizens of this State. In making such assessment there shall also be deducted from the value of such shares such sum as is in the same proportion to such value as is the assessed value of the real estate of the bank or banking association, and in which any portion of their capital is invested, in which said shares are held, to the whole amount of the capital stock of said bank or banking association. * * * The local authorities charged by law with the assessment of the said shares shall, within ten days after they have completed such assessment, give written notice to each bank or banking association of such assessment of the shares of its respective shareholders, and no personal or other notice to such shareholders of such assessment shall be necessary for the purpose of this act."

4. And your orator further says, upon information and belief, that between the first Monday of September in the year 1884 and the second Monday of January in the year 1885 the proper deputy tax commissioner of the city of New York, one Floyd T. Smith, acting under color of the said act of July 1st, 1882 (chapter 409), did value and assess for taxation the shares of stock of the said bank against the individual shareholders thereof, which valuation and assessment was, after deducting therefrom such sum as was in the same proportion
to such value as the assessed value of the real estate of the said
6 bank in which a portion of the capital of said bank was invested to the whole amount of the capital stock of said bank, at the rate of $89 per share, making the total valuation and assessment of the shares in the hands of the shareholders of your orator, after making the deduction as aforesaid and after deducting the debts severally claimed to be deducted by the said shareholders, to be $809,000 or thereabouts.

5. And your orator further says, on information and belief, that the said valuation and assessment made as aforesaid, embraced within the assessment rolls of said city, have been certified by the commissioners of taxes and assessments of the said city to the board of aldermen of the said city, and the said rolls containing the said valuation and assessment and the valuations and the assessments of the real and all other taxable personal estate in said city have been delivered to the said board of aldermen as required by the act known as the New York city consolidation act of 1882, to enable the said board of aldermen to levy thereon the taxes required by the corporation of the city of New York for the current year.

6. And your orator further says that the said board of aldermen of the said city have levied a tax for the purposes of said municipal corporation for the current year, *inter alia*, upon the said valuation and assessment of the shares of stock in the said bank

against the individual holders thereof, at the rate of two dollars and forty cents for each hundred dollars of the said valuation, and that it is the purpose and intention of the said George W. McLean, receiver of taxes of said city, to collect by process of law from the said individual shareholders, or from your orator, the tax so levied upon the said valuation and assessment of the said shares of stock.

7 7. And your orator further says that section 5219 of the Revised Statutes of the United States provides, with reference to national banks, as follows:

"Nothing herein (the national bank act) shall prevent all the shares in any association from being included in the valuation of the personal property of the owner or holder of such shares in assessing taxes imposed by authority of the State within which such association is located; but the Legislature of each State may determine and direct the manner and place of taxing all the shares of national banking associations located within the State, subject only to the two restrictions that the taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State and that the shares of any national banking association owned by non-residents of any State shall be taxed in the city or town where the bank is located and not elsewhere. Nothing herein shall be construed to exempt the real property of associations from either State, county, or municipal taxes to the same extent, according to its value, as other real property is taxed."

8. Your orator, claiming and averring that the said shares of the capital stock of the said bank are not legally liable to taxation by the mayor, aldermen, and commonalty of the city of New York for the purposes of the said corporation; that the said statute, approved July 1st, 1882 (chapter 409), in so far as it seeks to authorize the assessment and taxation of the shares of stock of national banks located within the State of New York, is contrary to the provisions of the said section 5219 of the Revised Statutes of the United States and to the Constitution of the United States, and is void, for

8 the reason that the State of New York has imposed no taxation whatever upon the said "other moneyed capital in the hands of the individual citizens of such State," within the meaning of said section 5219 and of the Constitution of the United States, but has, upon the contrary, expressly exempted it from taxation within said State, and that the said valuation and assessment of the shares of stock in said bank and the said levy of taxes thereon are also void, further represents, upon information and belief, as follows:

(a.) That, by chapter XIII of part I, title 1, section 7 (1 R. S., 387), of the Revised Statutes of the State of New York, it is provided that "the owner or holder of stock in any incorporated company liable to taxation on its capital shall not be taxed as an individual for such stock," and by chapter XIII of part I, title IV, section 1, of the same Revised Statutes (1 R. S., 414), it is also provided that "all moneyed or stock corporations deriving an income or profit from

their capital or otherwise shall be liable to taxation on their capital in the manner hereinafter prescribed."

(*b.*) That between the said first Monday in September, 1884, and the second Monday of January, 1885, the aggregate taxable value of the shares of stock in the hands of the individual citizens of said State of the said incorporated moneyed and stock corporations deriving an income or profit from their capital or otherwise, incorporated by the laws of the State of New York (not including life insurance companies, trust companies, banks, or banking associations, organized under the authority of this State or of the United States), which shares of stock were by the statutes last aforesaid exempted from all taxation in the hands of the individual holders thereof, amounted to a vast sum, to wit: to at least the sum of $1,200,000,000.

9 (*c.*) That, by chapter 534 of the laws of New York of 1880, entitled "An act to provide for the taxation of life insurance companies," it was enacted in section 1 that "every life insurance company incorporated under the laws of this State shall annually, on or before the first day of February, pay, to the treasurer of the State as a tax on its corporate franchise or business in this State a sum equal to one per centum upon the gross amount of premiums, interest, and other income, exclusive of rents, received by such company during the year ending the preceding 31st day of December from persons residing in this State or investments represented by or based upon property situated in this State," and in sec. 4 it was further enacted "that the lands and real estate of life insurance companies shall continue to be assessed and taxed where situated for State, city, town, county, village, school, or other local purposes, but the personal property of said companies and shares of stock therein shall hereafter be exempt from assessment or taxation except as in this act prescribed."

(*d.*) That between the said first Monday of September, 1884, and the second Monday of January, 1885, the aggregate taxable value of the shares of stock of the life insurance companies incorporated under the laws of this State, which shares of stock were by the statute last aforesaid exempted from all taxation in the hands of the individual holders thereof, amounted to the sum of $4,000,000 at least, and that in the same period the aggregate taxable value of the said personal property of said companies, consisting of mortgages, loans with collateral security, State, county, or municipal bonds, and railroad bonds and shares of stock of corporations (not including stocks of corporations created by the State of New York),

10 which personal property was by the statute last aforesaid exempted from all taxation in the hands of said corporations, amounted to the sum of $205,000,000, not including the bonds of the United States held by them amounting to $8,167,000.

(*e.*) That prior to the first day of July, 1882, the shares of the capital stock of trust companies organized under the laws of the State of New York were taxable in the hands of the individual holders thereof in the same manner and to the same extent that shares of the capital stock of national banks were taxable, but the

act passed on that day (chapter 409, Laws 1882), entitled "An act to revise the statutes of this State relating to banks, banking, and trust companies," wholly omitted from the provisions thereof, concerning the taxation of said corporations and the shares of stock therein, the shares of the capital stock of such trust companies, by which omission and by the operation of the provisions of the Revised Statutes of New York, mentioned in paragraph marked "*a*" of this bill of complaint, the shares of the capital stock of trust companies of the State of New York of the taxable market value of $60,000,000 were and are exempt from taxation in the hands of the individual citizens of this State holders thereof.

(*f*.) That by section 4 of chapter 456 of the Laws of New York of 1857 it was enacted that "the deposits in any bank for savings which are due to depositors, and the accumulations in any life insurance company organized under the laws of this State, so far as the said accumulations are held for the exclusive benefit of the assured, shall not be liable to taxation, other than the real estate and stocks which may be owned by such bank or company, and which are now liable to taxation under the laws of the State," and that
11 in the said period the aggregate taxable value of such deposits so exempted from taxation in the hands of the individual depositors, citizens of this State, amounted to the sum of $437,107,501.

(*g*.) That by the provisions of chapter 552 of the Laws of New York of 1880, entitled "An act to authorize the issue of certain bonds and stocks of the city of New York exempt from taxation," the bonds and stocks of the city of New York thereafter issued in accordance therewith for the purposes therein mentioned were to be and are exempt from all taxation excepting for State purposes; and by the provisions of chapter 522 of the Laws of New York of 1881 all new bonds thereafter issued by any village, city, town, or county of this State in accordance therewith and for the purposes therein mentioned were to be and are exempt from taxation for all purposes; and your orator avers, upon such information as it has been able to obtain upon the subject, that the aggregate taxable value of the bonds issued under the provisions of the said two statutes was and is at least $25,000,000.

(*h*.) That the statutes of the State of New York, as construed by the supreme court and court of appeals of the State, do not authorize the taxation of the shares of stock of and bonds issued by corporations created by the laws of other States or of foreign countries in the hands of the individual holders thereof citizens of the State of New York. Your orator avers that the aggregate taxable value of such shares of stock held by citizens of this State during the period aforesaid was a vast sum, the exact amount of which your orator has not been able to ascertain even approximately, but your orator, from the best information it has yet been able to obtain, believes and therefore avers that said sum was not less than $500,000,000.

12 (*i*.) Your orator further avers, on information and belief, that the several species of moneyed capital mentioned in paragraphs marked *a*, *b*, *c*, *d*, *e*, *f*, *g*, and *h* of this bill of complaint to the

extent therein stated have not, in fact, been valued and assessed for taxation by the assessors in the various taxing districts throughout the State, but that the same have been unformly in the State and by the deliberate and intentional act of the said assessors omitted from the assessments rolls of the said taxing districts, including the city of New York, in which city your orator avers over sixty per cent. of the whole of said exempted and untaxed moneyed capital is held by residents thereof.

(*k.*) That it is and was, during the said period, the official duty of each assessor of property for taxation throughout the State and of each deputy tax commissioner in the city of New York to annually estimate and assess at its full and true value all the real and personal property liable to taxation in his taxing district, and to set down the same in an assessment book or roll, and to affix thereto his certificate in writing under his oath that the same contains all the real estate situated in said district, and also contains a true statement of the aggregate amount of the taxable personal estate of each and every person named in such roll over and above the amount of debts due from such persons respectively, at the full and true value thereof. The rolls thus certified and sworn to are required by law to be delivered in the city of New York to the board of aldermen, and in every other town or ward to the supervisor thereof, who shall deliver the same to the board of supervisors at their next meeting, and the clerk of said several boards is required by law to transmit to the comptroller of the State of New York a certificate or return of
13 the aggregate amount of real and personal estate as valued for taxation as aforesaid.

And your orator avers, upon information and belief, that the said assessments, certificates, oaths, and returns were made by the respective officers aforesaid, for the purposes of taxation for the year 1885, and that the aggregate amount of taxable personal estate, after deducting the amount of the debts of the persons assessed therewith, throughout the entire State of New York, including the said city, for said year, as appears by the said certificates and returns to the said comptroller, was of the value of $333,000,000, of which sum at least $80,000,000 was composed of the assessments of the shares of national banks located in said State, and at least $20,000,000 of the assessments of the shares of State banks located therein, and that the aggregate amount of the debts which had been deducted in the assessments aforesaid from the valuation of the taxable personal estate of such debtors did not exceed the sum of $150,000,000 in said State. The said certificates and returns to the comptroller further show the value of all the taxable real estate in the said State to be $2,761,000,000. The aggregate value of such taxable personal estate, after deducting the amount of the debts of the persons assessed therewith in the said city of New York for said year, was about $160,000,000, after deducting the valuation of shares of national banks located in said city about $50,000,000, and the valuation of shares of State banks there located about $15,000,000, and the aggregate amount of the debts which had been deducted in the assessments aforesaid from the valuation of the taxable personal estate of

such debtors did not exceed the sum of $100,000,000 in said city. The value of the taxable real estate in said city was about $1,200,000,000.

14 (*l.*) That section 318 of the said act passed July 1, 1882 (chap. 409), revising the banking laws of this State, enacted that "the shareholders of any bank, banking association, or corporation doing a banking business under the general banking law or special charter of this State shall be assessed and taxed with respect to their shares of stock only at the same rate and place, to the same extent, and in the same manner as shareholders of national banks may be liable at the same time to be assessed and taxed by authority of the State of New York;" the intent of said section, as declared in the succeeding section, to be "to place and maintain shareholders of banks, associations, and corporations aforesaid upon an equality, in the particular in this act referred to, with the shareholders of national banks," and all acts and parts of acts inconsistent therewith were thereby expressly repealed.

Your orator, upon information, avers that during the period aforesaid the total par value of the shares of the capital stock of national banks located in said State was $83,273,000, and that of the shares of banks incorporated by the State of New York was $22,000,000.

(*m.*) Your orator avers and insists that by reason of the enactment of the laws hereinbefore set forth, exempting from taxation the various forms of moneyed capital in the hands of the individual citizens of this State, which exempted capital aggregates in value the sum of $2,431,000,000, as hereinbefore set forth in paragraphs marked *b*, *d*, *e*, *f*, *g*, and *h*, and of the fact that the laws taxing moneyed capital in such hands impose a tax upon no more than $383,000,000 in value of moneyed capital, as stated above in paragraph marked *k*, the State of New York has not, within the true intent and

15 meaning of the said section 5219 of the Revised Statutes of the United States, imposed upon "other moneyed capital in the hands of the individual citizens of the said State," a like tax with that which the said State has sought to impose upon the shares of stock of the national banks located within the limits of said State, and which the said defendants propose to levy upon and collect from the shares of stock of your orator.

9. And your orator further avers that it did, by its president, make upon the commissioners of taxes and assessments of the said city a demand in the following form, to wit:

NEW YORK, *April* 29, 1885.

To the commissioners of taxes and assessments of the city of New York.

GENTLEMEN: The undersigned respectfully represents that he is a resident of the city of New York and the president of the Mercantile National Bank of the City of New York, which bank is located in said city of New York, and that he finds upon examination of the records of your department that the stockholders of the said bank

have been assessed for taxation for 1885 upon their shares of stock at the rate of $89 per share.

You are hereby requested to strike from the assessment rolls the assessment so made, for the reason that as other moneyed capital in the hands of the individual citizens of said city and county is not taxable for city and county purposes, and is not so taxed, any assessment whatever of such shares is contrary to the provisions of § 5219 of the Revised Statutes of the United States, and is therefore illegal and void.

In behalf of said bank and its shareholders,

Respectfully yours,

(Signed) WM. P. ST. JOHN,
President.

To which demand a reply was received as follows:

16 NEW YORK, *May* 2, 1885.

Wm. P. St. John, Esq., president Mercantile National Bank, 191 Broadway, New York city.

SIR: You are hereby notified that your application for cancellation of assessments made against the holders of the shares of the Mercantile National Bank for 1885 was considered by the board of taxes and assessments at meeting held April 29, 1885, and denied.

Respectfully,

(Signed) FLOYD T. SMITH,
Secretary.

And that like demands were made at the same time by large stockholders of said bank, to which similar replies were made by said commissioners.

10. And your orator further avers that by the said act of July 1, 1882 (chapter 409), it was also enacted in § 314 that—

"When the owner of stock in any bank or banking association organized under the laws of this State or of the United States shall not reside at the same place where the bank or banking association is located the collector and county treasurer shall, respectively, have the same powers as to collecting the tax to be assessed by this act as they have by law where the person assessed has removed from the town, ward, or county in which the assessment was made, and the county treasurer, receiver of taxes, or other officer authorized to receive such tax from the collector may, all or either of them, have an action to collect the tax from the avails of the sale of his, her, or their shares of stock, and the tax on the share or shares of said stock shall be and remain a lien thereon from the day when the
17 property is by law assessed till the payment of said tax, and if transferred after such day the transfer shall be subjected to such lien."

And it was further enacted in section 315 that, "for the purpose of collecting the taxes to be assessed under the last three preceding sections of this act" (which includes section 312, and therefore the

taxes assessed upon the shares of your orator mentioned in paragraph numbered 4 of this bill of complaint), "and in addition to any other law of this State, not in conflict with the Constitution of the United States, relative to the imposition of assessments and collection of taxes, it shall be the duty of every such bank or banking association and the managing officer or officers thereof to retain so much of any dividend or dividends belonging to such stockholders as shall be necessary to pay any taxes assessed in pursuance of the last three preceding sections of this act until it shall be made to appear to such officer or officers that such taxes have been paid."

11. And your orator further represents that the said defendants will, if the said assessment of the shares of the said bank is not decreed to be illegal, and if they, the said defendants, are not restrained by the injunction of this honorable court, proceed to collect the tax so unlawfully levied against the shareholders of your orator upon the said unlawful assessments of their shares, either by seizing the goods and chattels of said shareholders or by seizing the moneys belonging to said shareholders in the hands of your orator, being the dividends, or a portion thereof, which your orator has declared since the 30th day of June last past, and which moneys are sufficient in amount to satisfy said taxes, or by selling the shares of stock owned by said shareholders respectively, or by action to collect such taxes from the avails of the sale of said shares, pursuant to
18 said chapter 409 of the Laws of 1882, and that thereby irreparable injury would not only be done to each of said shareholders, but also to your orator. Your orator would thereby be subjected to a great loss of standing and credit and other injuries, for the redress of which your orator is afforded no remedy by the strict rules of the law, and the franchises with which your orator is invested by the act of Congress aforesaid would be greatly impaired in value, and if your orator should pay the said taxes so levied upon said illegal assessments out of the moneys of its stockholders in the hands of your orator as aforesaid (stockholders owning a large number of shares of stock of your orator having notified your orator not to pay said tax levied upon their said shares) your orator would be subjected to a great multiplicity of suits brought by its separate shareholders for so doing, and in any event a great number of suits might be rendered necessary to adjust the rights of all the parties, and your orator would be subjected to great expense and irreparable injury thereby.

Inasmuch, therefore, as your orator has no adequate remedy by the strict rules of law and is relievable only in equity, your orator prays that the said mayor, aldermen, and commonalty of the city of New York and the said George W. McLean, receiver of taxes of said city, may be made parties defendant to this bill of complaint, that the writ of subpœna may issue out of this court against said defendant, and that they may be required to answer all and several the things hereinbefore stated.

Your orator further prays for equitable relief, as follows: That the said assessments upon the shareholders of your orator of the shares of stock of your orator severally owned by them, as herein-

before set forth, and the said levy of taxes upon the said assessments, made by said board of aldermen as aforesaid, may be decreed by your honors to be illegal and void, and that your honors will grant unto your orator your writ of injunction restraining
19 and enjoining, during the pendency of this suit, the said the mayor, aldermen, and commonalty of the city of New York, its officers, agents, and employees, and the said George W. McLean, receiver of taxes of the said city, his agents, servants, and employees, from receiving, having, demanding, or collecting or attempting to collect from your orator or from said individual shareholders, in any manner or by any process of law, the said taxes, and that upon a final hearing of this cause the said injunction may be made perpetual, and that your orator may have in the premises such other or such further relief as may to this honorable court seem meet and agreeable to equity.

BROWN & WELLS,
Solicitors for Complainant, 195 Broadway, New York.

CHARLES W. WELLS,
FREDERICK W. WHITRIDGE,
Of Counsel.

UNITED STATES OF AMERICA, } ss:
Southern District of New York, }

William P. St. John, being duly sworn, says that he is the president of the Mercantile National Bank of the City of New York, the complainant in the foregoing bill; that he has read the said bill and knows the contents thereof, and that the said bill is true of his knowledge, except as to those matters which are therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

WM. P. ST. JOHN.

Sworn to before me this 31st day of August, 1885.

SIDNEY DEKAY,
U. S. Commissioner, Southern District of N. Y.

(Endorsed:) U. S. circuit court, district of New York. In equity. The Mercantile National Bank of the city of New York *v.* The Mayor, Aldermen, and Commonalty of the City of New York and George W. McLean, Receiver of Taxes. Bill of complaint. Brown & Wells, sol's for complainant. U. S. circuit court. Filed Sept. 11, 1885. Timothy Griffith, clerk.

20 United States Circuit Court for the Southern District of New York, in the Second Circuit. In Equity.

THE MERCANTILE NATIONAL BANK, &c., Complainant,
ag't
THE MAYOR, ALDERMEN, AND COMMONALTY OF THE CITY OF NEW YORK and GEORGE W. McLEAN, Receiver of Taxes, Defendants.

To Timothy Griffith, clerk:

Please to enter my appearance as solicitor for the defendants above named.

October 5th, 1885.

Yours, &c., E. HENRY LACOMBE,
Counsel to the Corporation,
No. 2 Tryon Row, New York City.

(Endorsed:) U. S. circuit court, southern district of New York.
21 The Mercantile National Bank, &c., complainant, ag't the Mayor, &c., of the City of New York and George W. McLean, receiver of taxes, defendants. Notice of appearance. E. Henry Lacombe, counsel to the corporation, solicitor for defendants, No. 2 Tryon Row, N. Y. city. To Timothy Griffith, clerk, &c. Sir: You will please take notice that my appearance as solicitor for the defendants has this day been duly filed in the office of the clerk of this court. New York, Oct. 5, 1885. Yours, &c., E. Henry Lacombe, counsel to the corporation, solicitor for defendant, No. 2 Tryon Row, N. Y. city. To Timothy Griffith, Esq., clerk, &c. U. S. circuit court. Filed Oct. 5 1885. Timothy Griffith, clerk.

22 *Defendants' Answer.*

Circuit Court of the United States, Southern District of New York. In Equity.

THE MERCANTILE NATIONAL BANK OF THE CITY OF NEW YORK
vs.
THE MAYOR, ALDERMEN, AND COMMONALTY OF THE CITY OF NEW YORK and GEORGE W. McLEAN, Receiver of Taxes.

The joint and several answers of the Mayor, Aldermen, and Commonalty of the City of New York, and George W. McLean, receiver of taxes, defendants, to the bill of complaint of the above-named complainant.

These defendants, and each of them, now and at all times hereafter, saving and reserving all and all manner of benefit of exception which may be had or taken to the manifold errors, uncertainties, imperfections, and insufficiencies of the said bill of complaint, for answer thereto, or to so much as they are advised it is material or necessary to make answer to, answering, say:

1. That they admit that on the second Monday of January, A. D. 1885, and for several months prior thereto, the complainant had a nominal capital of $1,000,000, but these defendants have no knowl-

edge or information sufficient to form a belief as to the actual value of such capital, or as to the surplus fund of the complainant,
23 during the period aforesaid, or as to the truth of any other of the statements or allegations contained in paragraph numbered 1 (one) of the said bill of complaint.

2. That they admit the statements and allegations contained in paragraphs numbered 2 (two) and 3 (three) of the said bill of complaint.

3. That they deny that between the first Monday of September, in the year 1884, and the second Monday of January, 1885, one Floyd T. Smith was a deputy tax commissioner of the city of New York, and that the said Floyd T. Smith did value and assess for taxation the shares of stock of the said bank against the individual shareholders thereof, but admit that the said shares of stock were, by the proper officer, acting under the laws of New York of 1882, chapter 409, duly valued and assessed for taxation against the said individual shareholders at the rate of $89 per share, and that the total valuation and assessment of the said shares in the hands of the said shareholders for the year 1885 was $800,872 or thereabouts.

4. That they admit that the valuation and assessment made as aforesaid have been certified and the assessment rolls delivered, as set forth in the paragraph numbered 5 (five) of the said bill of complaint.

5. That they admit the statements and allegations contained in the paragraphs numbered 6 (six) and 7 (seven) of the said bill of complaint.

6. That they deny the statements and allegations contained in the paragraph numbered 8 (eight) of the said bill of complaint; and, further answering so much of the said bill of complaint as is contained in subdivisions *a*, *b*, *c*, *d*, *e*, *f*, *g*, *h*, *i*, *k*, *l*, and *m* of said paragraph 8 thereof, these defendants say:

(*a*.) That they admit the statements and allegations contained in said subdivision *a* thereof.

24 (*b*.) That they have no knowledge or information sufficient to form a belief as to the statements and allegations contained in subdivision *b* thereof.

(*c*.) That they admit the statements and allegations contained in subdivision *c* thereof.

(*d*.) That they have no knowledge or information sufficient to form a belief as to the statements and allegations contained in subdivision *d* thereof.

(*e*.) That as to the statements and allegations contained in subdivision *e* thereof they deny that the status, for purposes of taxation, of the shares of the capital stock of trust companies organized under the laws of the State of New York is therein correctly set forth, and they pray leave to refer to the laws themselves for a full and accurate statement thereof; and they deny the alleged exemption of the shares of the capital stock of trust companies of the State of New York, as set forth in the said subdivision *e*.

(*f*.) That they admit the statement of subdivision *f* thereof as to

the provisions of section 4, chapter 456, of the laws of New York of 1857, but have no knowledge or information sufficient to form a belief as to any other of the statements or allegations in said subdivision *f* contained.

(*g*.) That as to the statements and allegations of subdivision *q* thereof they have no knowledge or information sufficient to form a belief as to whether the aggregate taxable value of the bonds alleged to have been issued under the provisions of chapter 552 of the laws of New York of 1880 and chapter 522 of the laws of New York of 1881 was or is at least $25,000,000 or any like sum.

25 & 26 (*h*.) That as to the statements and allegations of subdivision *h* thereof they deny that the statutes of the State of New York, as construed by the supreme court and court of appeals of the State, do not authorize the taxation of the shares of stock of and bonds issued by corporations created by the laws of other States or of foreign countries in the hands of the individual holders thereof, citizens of the State of New York; and they further deny that they have any knowledge or information sufficient to form a belief as to the aggregate taxable value of such shares of stock held by citizens of this State during the period in said subdivision referred to.

(*i*.) That they have no knowledge or information sufficient to form a belief as to the statements or allegations of subdivision *i* thereof.

(*k*.) That as to the statements and allegations of subdivision *k* thereof they deny that the official duties of the officers therein specified are therein correctly set forth, and pray leave to refer to the laws of the State of New York in such case made and provided; and they further deny that they have any knowledge or information sufficient to form a belief as to whether the assessments, certificates, oaths, and returns required by law were made by the respective officers for the purposes of taxation for the year 1885, as alleged in said subdivision *k* of the said bill of complaint, or as to the aggregate amount of taxable personal estate throughout the entire State of New York for the said year, or as to what portions of such amount were composed respectively of the assessments of the shares of national and State banks located in said State, or as to the aggregate amount of the debts which had been deducted in such assessment from the valuation of the said taxable personal estate,

27 or as to the value of all the taxable real estate in the State of New York, as alleged to be shown by the certificates and returns to the comptroller; and these defendants further deny the statements and allegations of said subdivision *k* as to the aggregate value of the taxable personal estate in the city of New York for said year, and the valuation of shares of national banks located in said city, and the valuation of shares of State banks there located, and the aggregate amount of the debts which had been deducted in the assessments referred to from the valuation of the taxable personal estate for said year in said city. They admit that the value of taxable real estate in said city for said year was about $1,200,000,000.

(*l*.) That as to the statements and allegations contained in subdivision *l* thereof, they have no knowledge or information sufficient

to form a belief as to the total par value during the period specified of the shares of the capital stock of national banks located in the State of New York, or of the shares of banks incorporated by said State.

(*m.*) That as to the statements and allegations contained in subvivision *m* thereof they protest that it is untrue that, by reason of the enactment of the laws set forth in said bill of complaint, the sum of $2,431,000,000 of moneyed capital in the hands of the individual citizens of this State was exempted from taxation, or that the laws taxing moneyed capital in such hands impose a tax upon no more than $383,000,000 in value of moneyed capital, and they deny that the State of New York has not, and they claim and say that the said State has, within the true intent and meaning of section 5219 of the Revised Statutes of the United States, imposed upon "other moneyed capital in the hands of the individual citi-
28 zens of the said State" a like tax with that which the said State has sought to impose upon the shares of stock in the national banks located within the limits of said State.

7. That they admit the statements and allegations contained in the paragraph numbered 9 (nine) of the said bill of complaint as to the demands in writing upon the commissioners of taxes and assessments and the replies of the said commissioners thereto.

8. That they admit the statements and allegations contained in the paragraph numbered 10 (ten) of the said bill of complaint as to the provisions of sections 314 and 315 of chapter 409 of the Laws of New York of 1882.

9. That they deny that irreparable injury would be done to the said complainant or to the stockholders thereof by the alleged contemplated action of these defendants, as set forth in the paragraph numbered 11 (eleven) of the said bill of complaint, if the relief prayed for in said bill should be denied by this honorable court; they deny that the complainant would be subjected thereby to a great loss of standing and credit or to other injuries, for the redress of which the said complainant is afforded no remedy by the rules of the law; and they deny that the franchises of the said complainant would be thereby greatly impaired in value. These defendants have no knowledge or information sufficient to form a belief as to whether the said complainant would, in any event, be subjected to a great multiplicity of suits or to great expense and irreparable injury thereby.

10. And these defendants, further answering, deny that the said complainant is entitled to the relief, or any part thereof, in the said bill of complaint demanded.

29 And the defendants deny that there is any other matter, cause, or thing in the said bill of complaint contained (material or necessary to make answer unto, and not herein and hereby well and sufficiently answered, avoided, admitted, or denied) true to the knowledge or belief of the defendants, or of either of them.

And these defendants pray the same advantage for the aforesaid answer as if they had pleaded or demurred to the said bill of com-

plaint; and they humbly pray to be hence dismissed, with the reasonable costs and charges in this behalf most wrongfully sustained.

E. HENRY LACOMBE,
Counsel to the Corporation, Solicitor for Defendants,
2 Tryon Row, New York.

JAMES C. CARTER,
THOMAS ALLISON,
Of Counsel.

UNITED STATES OF AMERICA, *Southern District of New York,* } ss:

Richard A. Storrs, being duly sworn, says that he is the deputy comptroller of the city of New York, and an officer of the above-named defendants, the Mayor, Aldermen, and Commonalty of the city of New York; that the foregoing answer is true to his knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true. Deponent further says that the reason why the verification is not made by the said defendants is that they are a corporation; that this deponent is an officer of the same, to wit, deputy comptroller, and that the grounds of his belief as to all matters not therein stated upon his knowledge are as follows, to wit, information obtained from the books and records of the department of finance, or of other departments of the city government, or from statements made to him by certain officers or agents of the defendants.

RICH'D A. STORRS,
Deputy Comptroller.

Sworn to before me this 28th day of December, 1885.

JAMES H. VAHLES,
Notary Public, New York County.

Endorsed: U. S. circuit court, southern dist. of New York. In equity. The Mercantile National Bank of the City of New York *vs.* The Mayor, Aldermen, & Commonalty of the City of New York. Answer. E. Henry Lacombe, counsel of the contestee. U. S. circ-it c't. Filed Dec. 28, 1885. Timothy Griffith, clerk.

Replication.

United States Circuit Court, Southern District of New York. In Equity.

THE MERCANTILE NATIONAL BANK OF THE CITY [OF] NEW YORK, Complainant,

vs.

THE MAYOR, ALDERMEN, AND COMMONALTY OF THE CITY OF NEW YORK and GEORGE W. MCLEAN, Receiver of Taxes, Defendants.

The replication of the above-stated complainant to the joint and several answers of the Mayor, Aldermen, and Commonalty of the City of New York and George W. McLean, receiver of taxes, defendants.

The repliant, saving and reserving to itself all and all manner of advantage of exception to the manifold insuffi-

ciencies of the said answers, for replication thereunto saith that it will aver and prove its said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answers of the said defendants are uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any matter or thing whatsoever in the said answers contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, *is traversed or denied*, is true; all which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by its said bill it has already prayed.

BROWN & WELLS,
Solicitors for Complainant, 195 *Broadway, New York.*

CHARLES W. WELLS,
FREDERICK WHITRIDGE,
Of Counsel.

(Endorsed:) U. S. circuit court, southern district of New York. In equity. The Mercantile National Bank of the City of New York, complainant, *v.* The Mayor, Aldermen, & Commonalty of the City of New York and George McLean, receiver of taxes, defendants. Replication. Brown & Wells, solicitors for complainant, 195 Broadway, New York. U. S. circuit court. Filed Jan'y 7th, 1886. Timothy Griffith, clerk.

32 *Stipulation.*

United States Circuit Court, Southern District of New York. In Equity.

THE MERCANTILE NATIONAL BANK OF THE CITY OF NEW YORK

vs.

THE MAYOR, ALDERMEN, AND COMMONALTY OF THE CITY OF NEW YORK and GEORGE W. McLEAN, Receiver of Taxes.

JUNE 29, 1886.

It is hereby stipulated and agreed by and between the parties to the above-entitled suit that the following statement of facts hereby agreed upon between the parties hereto may be presented to the court and used by it upon applications for preliminary or permanent injunctions, but that said statement shall not preclude either party hereto from submitting to the court upon any hearing in this cause (subject to all legal objections) such other or additional statement, affidavit, or evidence as may be deemed material and necessary by the party offering the same, even though such new matter should vary or contradict the statement hereby submitted, in which case the statement now presented, or the portion or portions thereof so varied or contradicted by new matter, shall be null, void, and of no effect:

1. That the complainant, on the second Monday of January, A. D. 1885, and for several months prior thereto, had a capital stock of

the par value of $1,000,000 and a surplus fund of $200,000;
33 that nearly the whole of said capital and surplus fund was, during that period, invested in bonds of the United States of the par value of $949,000, and of a market value and cost largely exceeding that sum; that its shares of stock were each of the par value of $100, and of the number of 10,000, and were then held by 142 persons and corporations, 50 of whom, owning 1,877 shares, were residents of States other than the State of New York, and the remainder residents of the State of New York.

2. That on the second Monday of January, 1885, the proper tax officers of the city of New York, acting under chapter 409 of the laws of 1882 of the State of New York, did value and assess, for taxation, the shares of stock of said bank against the individual shareholders thereof at the rate of $89 per share, after deducting the proportion of the assessed value of the real estate of said bank applicable to each share of stock as by law required, making the total gross valuation of said shares in the hands of the shareholders the sum of $890,000, from which sum the debts of sundry indebted stockholders, amounting to $89,128, were deducted as by law allowed, leaving the total valuation of said shares against said stockholders upon which taxes were thereafter assessed the sum of $800,872.

3. That on the second Monday of January, 1885, the aggregate actual value of the shares of stock of the incorporated moneyed and stock corporations, incorporated by the laws of the State of New York, deriving an income or profit from their capital or otherwise (not including life insurance companies, trust companies, banks or banking associations organized under the authority of this State or of the United States), amounted to the sum of $755,018,892; that "Exhibit A," hereto appended and made a part of this agreement, contains a list of the corporations whose shares of capital stock are embraced in said sum of $755,018,892, and also shows the
34 total par value of the shares of capital stock of each of said corporations. It is understood that this agreement shall not preclude the complainant from submitting to the court any proof legally admissible of the value of the shares of capital stock of any corporation or corporations not embraced in said list.

4. That at the period aforesaid the aggregate actual value of the shares of stock of the life insurance companies incorporated under the laws of this State amounted to the sum of $3,540,000, and at the same period the aggregate value of the personal property of said companies, consisting of mortgages, loans with collateral security, State, county, and municipal bonds, and railroad bonds and shares of stock of corporations (but not including the bonds of the United States, nor the shares of corporations created by the State of New York), amounted to $195,257,305, all of which is shown in detail in the schedule hereto annexed, marked "Exhibit B."

5. That at the said period the aggregate actual value of the shares of the capital stock of the trust companies existing in the State of New York, and organized under its laws, amounted to $32,018,900, as is shown in detail in the schedule hereto annexed, marked "Exhibit C."

6. That at the same period the aggregate actual value of the deposits due by the savings banks of this State to depositors was $437,107,501 (not including the surplus accumulated by the said corporations, amounting to $68,669,001).

7. That the aggregate actual value of the bonds and stocks issued by the city of New York, subject to the provisions of chapter 552 of the Laws of 1880, at the said period, amounted to $13,467,000.

8. That the aggregate actual value at the same period of
35 the shares of stock of corporations created by States other than the State of New York, owned by the citizens of the State of New York, amounted to at least the sum of $250,000,000.

9. The assessed valuation of all personal property, after making the deductions allowed by law, in the city of New York (at the said period), as shown by the annual record of the assessed valuation of real and personal estate of the said city for the year 1885, was $202,673,866. This sum included the capital of corporations (after making deductions for investments thereof in real estate, shares of New York corporations, taxable upon their capital stock under the laws of this State, and non-taxable securities), as follows:

Insurance companies	$2,146,379
Trust companies	156,506
Miscellaneous companies	29,234,409
Railroad companies	12,339,871

It also included—

Shares of national banks	45,046,974
Shares of State banks	15,700,220

The assessed value of the real estate in said city for said period is	$1,168,443,137
And in the said State, including the city of New York, is	2,761,973,845
The latter sum including the sum of about	340,000,000

being the assessed value of the real estate located in said State belonging to corporations.

The "aggregate amount of the taxable personal estate" within the State of New York, exclusive of said city, after deducting debts due by the owners thereof for the year ending December 31, 1884, as assessed by the assessors and returned to the State comptroller, is $151,632,569.

The aggregate capital stock, taken at par, of the national
36 banks outside of the city of New York, but within the State of New York, on December 20, 1884, as shown by the report of the Comptroller of the Currency of the United States, was $36,804,160

And that of State banks, outside of the said city, but within said State, as shown by the report of the bank superintendent of New York, is	8,128,000
Total (outside of New York city)	$44,932,160

The total par value of the shares of national banks in said State, including the city of New York, for the period aforesaid, is $83,054,160
And of the State banks 22,815,700

10. That it is the intention of the defendants, unless restrained by injunction, to collect the said tax levied by them against the shareholders of the said complainant upon said shares by the use of all needful legal process.

11. That any statutes of the United States or of the State of New York may be cited and relied upon before the said court as if herein fully set forth.

BROWN & WELLS,
Solicitors for Complainant.
E. HENRY LACOMBE,
Counsel to the Corporation, Solicitor for Respondents.

(NOTE—The exhibits attached to this stipulation are identical with those attached to the "stipulation on final hearing" hereinafter appearing, and are here omitted. Timothy Griffith, clerk.)

37 United States Circuit Court, Southern District of New York.

MERCANTILE NATIONAL BANK OF THE CITY OF NEW YORK
vs.
THE MAYOR, etc., OF THE CITY OF NEW YORK and GEORGE W. McLEAN, Receiver of Taxes.

WALLACE, *J.*:

Thirty-five national banking associations located in the city of New York have brought suits against the defendants to restrain them from collecting taxes levied pursuant to an assessment made in January, 1885, upon the shares of the respective stockholders of the several associations. This suit is one of the number, and is here upon a motion for an injunction *pendente lite*. As the case turns upon questions of law, the decision in this motion will be practically a final decision of this court of the rights of the parties. The fact that these associations pay in round numbers a million dol-
38 lars annually in taxes upon the shares of their stockholders, and more than one-fourth of the total taxation upon personal property in the city of New York, sufficiently indicates the importance of the controversy to both parties. The case has been prepared with great thoroughness, and has been elaborately and ably argued. The position of the complainant is that the New York State system of taxation creates or effects a discrimination between the taxes imposed for local purposes (which is everywhere the most onerous taxation) upon national bank shares and that imposed upon the other moneyed capital of individual tax-payers, which is hostile to the former and forbidden by the act of Congress by which alone authority exists for any taxation of such shares by the States. The theory of this discrimination is that so much of the moneyed capital of individual tax-payers is exempted from assessment by the State laws that what remains, including the capital represented by national

bank shares, is subjected to a higher rate of taxation than is assessed upon the moneyed capital generally of the tax-payers. If this position is correct there can be no valid assessment of national bank shares for taxation in this State, and these shares will be relieved from any contribution whatever to the general burden of taxation.

State taxation of national bank shares is lawful only by the laws of Congress, first enacted as a provision of the national banking act of 1864, which, as amended by the act of February 10, 1868, is now embodied in section 5219, United States Revised Statutes. The section provides that "the taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of the individual citizens of such State." As Congress was conferring power on the States which they would not otherwise have had to tax these shares, it undertook to impose a restriction upon the exercise of that
39 power manifestly designed to prevent taxation which should discriminate against that class of property as compared with other moneyed capital. If the greater part of the moneyed capital of individual tax-payers of the State is exempted from taxation by the State laws the rule of equality of burden between such capital and the capital invested in national bank shares which Congress intended to prescribe as a condition of the permission given to the States to tax these shares at all is violated, and the State whose system permits this discrimination cannot justly complain because national bank shares are wholly exonerated from taxation. This is the result of many of the decisions of the courts under the construction of the law of Congress. The most recent expression of the Supreme Court of the United States is found in Boyer *vs.* Boyer, 113 United States, 689, where it is declared that "While exact uniformity or equality of the burden cannot be expected under any system, capital invested in national bank shares was intended by Congress to be placed upon the same footing of substantial equality in respect to taxation by State authority as the State establishes for other moneyed capital in the hands of individual citizens, however invested." In that case the doctrine was applied to a state of things found in the taxing system of the State of Pennsylvania, by the laws of which State there appeared to be exempted from taxation for local purposes all mortgages, judgments, recognizances whatever, all moneys due or owing upon articles of agreement for the sale of real estate, of loans issued by corporations which were liable to pay a designated State tax, all bonds or certificates of indebtedness of any railroad company incorporated by the Commonwealth, and all shares of stock in the hands of stockholders of any corporation of the State liable to pay a specified tax into the State treasury. The court in the opinion used the following language: "Upon
40 such facts, and in view of the revenue laws of the State, it seems difficult to avoid the conclusion that in respect to county taxation of national bank shares there has been and is such a discrimination in favor of other moneyed capital against capital invested in such shares as is inconsistent with the legislation of Congress. The exemptions in favor of other moneyed capital appear to be of such a substantial character in amount as to take the

present case out of the operation of the rule that it is not absolute equality that is contemplated by the act of Congress, a rule which rests upon the ground that exact uniformity or equality of taxation cannot in the nature of things be expected or attained under any system. But, as substantial equality is attainable, and is required by the supreme law of the land in respect to State taxation of national bank shares, when the inequality is so palpable as to show that the discrimination against capital invested in such shares is serious the courts have no discretion but to interfere."

The bill of complaint in the present case is framed to bring the controversy within the scope and principle of this decision. The allegations are that under the laws of this State there is exempted from taxation all moneyed capital represented by shares of stock in all incorporated companies of the State liable to taxation on their capital, exclusive of banks, banking associations, and trust companies, all represented by shares of stock in trust companies and life insurance companies incorporated under the laws of this State, and all represented by the deposits in savings banks of the State, and investments in the bonds and stocks of the State, and the bonds created by the villages, cities, towns, and counties of the State. The bill also alleges that under the laws of the State, as construed by the highest court of the State, all moneyed capital of individuals invested in the shares of stock of corporations of other States or of foreign countries is not taxable. It sets out the amount or
41 value of the respective classes of invested capital which escaped taxation in the year 1885 under the operation of these laws. If the averments are true the exemptions aggregate over two billions of moneyed capital, while the personal property actually reached and subjected to assessment in the hands of individuals throughout the State for that year was less than four hundred million in valuation.

An examination of the State system will show that although a comparatively small part of the personal property of tax-payers is actually reached and subjected to taxation against the tax-payers individually, the result is not attributable to the special features of the taking system of this State, but is a logical consequence of any system which attempts to reach personal property for direct taxation.

By the fundamental rule of the New York State system all lands and personal estate within the State, whether owned by individuals or corporations, subject to exemption hereinafter specified, is liable to taxation. Revised Statutes, part one, chapter 13, title one, section one, personal estate is declared to include all household furniture, moneys, goods, chattels, debts due from solvent debtors, whether on account, contract, note, bond, or mortgage, public stock, and stocks in moneyed corporations, and such portion of the capital of incorporated companies liable to taxation on their capital as shall not be invested in real estate. Same title, section three. By section 7 of the same title it is provided that "The owner or holder of stock in any incorporated company liable to taxation on its capital shall not be taxed as an individual for such stock." And by section one,

of title four, of the same chapter, it is provided that "All moneyed or stock corporations deriving an income from their profits or capital, or otherwise, shall be liable to taxation on their capital in the manner hereinafter prescribed." The manner prescribed, as
42 altered by chapter 456 of the laws of 1857, section three, is as follows: "The capital stock of every company liable to taxation, except such part of it as shall have been excepted in the assessment-roll, or as shall have been exempted by law, together with its surplus profits or reserve funds exceeding ten per cent. of its capital after deducting the assessed value of its real estate, and all shares of stock in other corporations actually owned by such company which are taxable upon their capital stock by the laws of this State, shall be assessed at its actual value and taxed in the same manner as other personal and real estate of the county.

By the laws of 1880, chapter 542, section three, a franchise tax for the use of the State is imposed upon every corporation, joint-stock company, or association organized under the laws of the State, or of any other State or country, and doing business in this State, except savings banks, life insurance companies, banks, foreign insurance companies, and manufacturing corporations carrying on manufacture within this State, and by section eight such corporations, joint-stock companies, and associations as are compelled to pay a franchise tax are exempted from assessment and taxation for State purposes except upon their real estate, but in all other respects remain liable to assessment and taxation. No franchise tax is imposed on banks or banking associations, and in this respect they stand upon an equality with national banking associations, as they do in all other respects for the purposes of taxation under the laws of the State. The capital stock of these associations is not liable to taxation as against the corporation, but the shares are taxable as a part of the personal property of the individual stockholder. Laws of 1882, chapter 409, section 320.

In the language of a recent decision of the court of appeals (*re* McMahon), decided April 13, 1886, "the general laws of the
43 State require all property, both real and personal, no matter by whom owned, except in certain classes of special exemption, to be assessed for purposes of taxation, this requirement embracing all property owned by individuals as well as corporations, and including all shares of stock held by individuals in corporations, except in cases where the capital stock of such corporations is itself liable to taxation as against the corporation."

The exemptions created by the the State laws, so far as they are material to this case, are comprised of two classes:

1. Those which include shares of stock in corporations of the State exempting them from taxation as against the holders or owners individually, and substituting a tax upon the capital stock at its actual value against the corporations themselves for local purposes and a franchise tax for State purposes; and

2. Those which include investments in life insurance companies in the stocks of the State or the bonds of its municipalities and deposits in savings banks. The exemptions of the first class have

reference solely to the mode of collecting a tax on capital invested in corporations in the most efficient way. Those of the second class are founded upon considerations of State policy, and are intended to promote peculiar interests for the benefit of the public.

The provisions of the State laws respecting exemptions of the second class are as follows:

By the provisions of chapter 552 of the laws of 1880 certain bonds and stocks of the city of New York are exempt from taxation except for State purposes. By chapter 552 of the laws of 1881 all bonds thereafter issued by any village, city, town, or county of the State to pay and retire any existing bonded indebtedness which was created in aid of the construction of any railroad are exempt
44 from taxation for local or State purposes. By chapter 534 of the laws of 1880 the personal property and shares of stock of life insurance companies are exempt from taxation for local purposes, but these companies are required to pay a State tax of one per cent. annually upon the gross amount of their premiums, interest, and other income. By section 4 of chapter 456 of the laws of 1857 deposits in any bank for savings which are due to depositors are declared not to be liable to taxation, and according to the interpretation of some of the State courts this section is to be construed as exempting the depositors as well as the corporations from taxation upon such deposits.

Prior to July 1, 1882, the shares of the capital stocks of trust companies organized under the laws of the State were taxable in the hands of individual holders in the same manner and to the same extent that shares of the capital stock of national banks and State banks were taxable; that is, they were included in the valuation of the personal property of the stockholders in the assessment of taxes at the place where the company was located, but by the act passed on that day, chapter 409, Laws of 1882, to revise the statutes of the State relating to banks, banking associations, and trust companies no provision was made for taxing them such as was made for taxing banks and banking associations. Section 324 of that act, however, subjects trust companies to a franchise tax for State purposes. These companies are not exempted from taxation for local purposes upon their capital stock, and the result of the legislation respecting them, as is conceded by the counsel for the complainant, is to subject them to the taxation imposed on the miscellaneous incorporated companies of the State; that is, to taxation upon their capital stock assessed at its full valuation for local purposes, besides a franchise tax for State purposes.

Respecting the averments of the bill relative to the immu-
45 nity from taxation of that class of moneyed capital invested in the shares of corporations of other States and foreign countries, it suffices to say that it is not claimed that the State laws exempt such shares from taxation in the hands of individual taxpayers who hold or own them, but they escape taxation because the State courts have decided that such shares are beyond the taxing jurisdiction of the State. Unless these decisions are correct and the

State has no power to tax these shares, such moneyed capital is taxable as part of the personal property of the tax-payer.

Thus it appears that, exclusive of exemptions not complained of in the bill (such as the personal property of ministers of the gospel to a limited amount and the personal property of charitable or reformatory institutions), the State system of taxation is designed to reach and subject to equality of burden, so far as that is practicable in a matter where the intrinsic difficulties are so great, all taxable property, both real and personal, except investments in life insurance companies, deposits in savings banks, the public stocks, and the bonds of the municipalities of the State.

It is not open to fair doubt that the personal property of taxpayers, represented by shares of stock in incorporated companies of the State, is taxed as substantially and as onerously as is the other moneyed capital of the citizens. Indeed, it cannot be reasonably doubted that this kind of personal property is taxed much more effectually and onerously than is the moneyed capital of individuals. It does not militate against this proposition that a part of the moneyed capital of citizens, which is invested in forms which enable it to be easily traced and its value accurately ascertained, does not escape taxation by evasion or oversight, and is, consequently, more effectually reached and taxed than the bulk of the moneyed capital of individuals. Shares in national banks fall within this category, as do shares in State banks, and also capital invested in pri-
46 vate banking, and capital invested in these forms does undoubtedly bear more than its just burden of taxation relatively to other moneyed capital or to personal property generally; but this is a result which is not peculiar to the system of taxation of this State, but exists everywhere.

The case is thus narrowed down to the question whether the exemptions relating to shares of stock in life insurance companies to deposits in savings banks and to certain classes of municipal obligations, together with the special features of the taxation of the capital invested in the shares of miscellaneous corporations, effect a discrimination in taxation between national bank shares and other moneyed capital, repugnant to the law of Congress.

In the language of Mr. Justice Nelson, in People against The Commissioners, 4 Wall., 256—

"It is known as sound policy that in every well-regulated and enlightened State or government certain descriptions of property and also certain institutions, such as churches, hospitals, academies, cemeteries, and the like are exempt from taxation; but these exemptions have never been regarded as disturbing the rates of taxation, even where the fundamental law had ordained that it should be uniform."

In Hepburn against The School Directors, 23 Wall., 480, the section in question was before the court in a case where by the laws of the State all mortgages, judgments, recognizances, and money owing upon all articles of agreement for the sale of real estate were exempt from taxation except for State purposes; and Chief Justice Waite, delivering the opinion of the Court, said: "It could not

have been the intention of Congress to exempt bank shares from taxation because some moneyed capital was exempt." In Adams *vs.* Nashville, 95 U. S., 19, the unfriendly discrimination complained of consisted in the exemption of certain municipal bonds, the argument being that there were many such
47 bonds in existence in the hands of individuals, and that the complainant's shares being taxed while the bonds were not, the taxation violated the act of Congress. But the Court held that the act of Congress was not intended to control the power of the State on the subject of taxation or to prohibit the exemption of particular kinds of property, but was intended to protect capital invested in national banking shares from unfriendly discrimination by the States in the exercise of the taxing power. The cases of Hepburn *vs.* The School Directors and Adams *vs.* Nashville are referred to in the opinion in Boyer *vs.* Boyer, with the comment that they leave untouched the question as to the power of the States to subject shares of national banks to taxation, "when a very material portion of other moneyed capital in the hands of individual citizens within the same jurisdiction or taxing district is exempted from taxation." No rule was intimated in that opinion defining what exemptions are permissible as within the discretionary policy of the State or what are so serious as to constitute a very material portion of the moneyed capital of the tax-payers and an unlawful discrimination against national banking shares. Consequently the question whether the exemptions in the system of this State are such as to preclude any taxation of such shares is wholly open. This question must be solved by determining what Congress meant by the term "other moneyed capital in the hands of individual citizens of such State" and what is substantial equality as between that kind of capital and the capital invested in banking shares.

It is obvious that if shares of stock in miscellaneous corporations other than those which are commonly called moneyed corporations fall within the designation of "moneyed capital" the very large amount of this kind of capital which, under the system of this State, is exempt from taxation "in the hands of individual citizens" forms a material portion of the aggregate capital. It is con-
48 tended for the complainant that such shares of stock are moneyed capital, and that they are not assessed in the hands of individual tax-payers, and are therefore to be classed with moneyed capital which is exempt from taxation in ascertaining whether the rule of equality prescribed by Congress is violated.

It is not to be denied that these shares are not taxed technically as the property of the owners by the State laws, although the corporations themselves are taxed for the capital which these shares represent. The capital stock of a corporation and the shares held by the several stockholders are distinct species of property for the purpose of taxation—as distinct as real estate and the mortgage by which it may be encumbered. The corporation and its capital and property are one thing; the stockholders and their shares quite another. The corporation has the legal title and right of disposition of all the corporate property subject to the conditions of its charter. The stock-

holder's right is to enjoy a proportionate part of the profits, or, upon dissolution of the corporation, a proportionate part of the assets after payment of the debts. This is a distinct, independent interest or property held by the shareholder like any other property that may belong to him. It is this interest which the act of Congress leaves subject to taxation by the States, while the States are denied the power to tax the capital stock of national banks. It is well settled by the authorities that because the property of shareholders in the shares and the property of the corporation in its capital are distinct property interests both may be taxed.

Albany State Bank *vs.* Mayor, 6 Fed. Rep., 418.
Van Allen *vs.* The Assessors, 3 Wall., 573.
The Delaware Railroad Tax, 18 Wall., 206.
Farrington *vs.* Tennessee, 95 U. S., 679.

49 It may therefore be fairly urged that Congress did not intend that the taxation imposed by the State upon the capital stock of manufacturing, railroad, mining, and many other corporations should be considered in ascertaining whether the taxation of national bank shares is greater or is less than that of moneyed capital in the hands of individual tax-payers. State policy may legitimately dictate different modes and rates of taxation for the different kinds of corporations which the State creates, and discourage the operations of some and foster the interests of others by a diversity of taxation, and it would be manifestly difficult, if not impossible, in view of the discriminations which are found in the system of every State, to deduce any general rule of taxation and make it the test of the lawful taxation of national bank shares.

But it does not follow that the capital invested in such corporations is to be classed as exempt from taxation in ascertaining whether national bank shares are subject to unfriendly discrimination. When it appears that the capital of the individual tax-payer invested in these shares is required to bear as great a burden of taxation as that invested in national bank shares there is no reasonable or real foundation for the claim of hostile discrimination. While Congress did not intend that the taxation of the States on the property of corporations should furnish the rule or standard of the taxation authorized for national bank shares, but intended to limit the States to a taxation no greater than that imposed on the moneyed capital of their individual citizens, there is no reason to suppose that Congress cared at all about the mode the States might adopt for the collection of their taxes. A tax imposed on the capital or property of a corporation falls as effectually on the capital of the shareholder represented by his share as does a tax upon the shares directly, and although in legal contemplation a tax
50 upon the former is not a tax upon the latter, practically and substantially taxation of the capital of the corporation is taxation of the capital of the shareholder.

If shares of stock in corporations other than moneyed corporations are not "moneyed capital," then it is immaterial to the question under consideration whether such shares are subjected to taxation

directly or indirectly, and even if the capital invested in such shares is not taxed at all it should not be classed with exempted capital in ascertaining whether a material portion of the moneyed capital of individuals is exempt. The Supreme Court has never decided precisely what signification belongs to the term "moneyed capital," as used in the act of Congress. It is hardly proper to call shares in manufacturing or trading corporations "moneyed capital in the hands of individual citizens," and if Congress had intended to include all capital thus invested it would have been easy to do so under some such comprehensive term as personal property. It is not obvious how the equitable interest of the shareholder in such corporations, which entitles him to share in the profits or upon dissolution in the division of the assets, should be deemed moneyed capital any more than the capital invested in any other kind of personal property which can be converted into money by sale is to be deemed moneyed capital. Shares of stock in moneyed corporations, such, for instance, as trust companies, capital invested in the business of private banking, is doubtless property described as moneyed capital. So also the capital represented by all obligations which are solvable in money, such as notes, bonds, certificates of indebtedness, and other securities for the payment of money, would seem to be within the description. The capital which was exempted from local taxation under the laws of Pennsylvania, and which the court held, in Bover *vs.* Boyer, to be a material portion of the moneyed capital of individual tax-payers was almost wholly of this kind, being
51 mortgages, judgments, bonds, certificates of indebtedness, and moneys owing upon articles of agreement. It is true that shares of stock of all corporations of the State liable to pay a State tax were also exempt in that case; but no emphasis was placed in the opinion of the court upon the exemption of this kind of capital, and of course this exemption included shares of stock in moneyed corporations as well as in other corporations. The term "moneyed capital" has a more limited meaning than the term personal property, and it must be assumed that it was employed deliberately in the act of Congress to denote more restricted forms of invested capital. In one sense the capital invested by the merchant or the manufacturer in his business is moneyed capital, but it is no more so than that which the professional man has invested in his library or the mechanic in the implements of his trade. If such investments are to be deemed moneyed capital, then the term has substantially as wide significance as the term personal estate. If the capital of the merchant or the manufacturer is not moneyed capital, it would seem to follow that the interests represented by the shares of manufacturing or trading corporations are not properly described as moneyed capital. The Supreme Court say, in Evansville Bank *vs.* Britton, 105 U. S., 324: "The act of Congress does not make the tax on personal property the measure of the tax on the bank shares of the State, but the tax on moneyed capital in the hands of individual citizens. Credits, money loaned at interest, demands against persons or corporations, are more purely representative of moneyed capital than personal property, so far as they can be said to differ. Undoubtedly, there

may be much personal property exempt from taxation without giving banking shares a right to similar exemption, because personal property is not necessarily 'moneyed capital.'"

52 If it should be assumed, however, that Congress meant to include in the term "moneyed capital" all capital invested in business or for income not represented by real estate, and that shares of miscellaneous corporations are therefore included, this kind of capital should not be deemed exempt from taxation under the system of this State because, as has been already stated, it is taxed as effectually and as onerously as other kinds of moneyed capital of individual citizens; and although such tax is not assessed against the shares directly it falls ultimately and inevitably upon the capital of the individual invested in it. The beneficiaries of a trust estate are the persons upon whom the taxes of the estate really falls, although the assessment is not made against them, but against the trustee, who has the legal title of the personal property.

It only remains to be considered whether the exemptions of shares of life insurance companies of the stocks and bonds issued by the city of New York of the bonds issued by other municipalities of the State and the deposits in savings banks are such as to manifest a serious discrimination against national bank shares.

The assessable value of the shares of life insurance companies in this State is relatively an insignificant part of the whole moneyed capital of the tax-payer, and the exemption is made to foster a class of corporations, which exercise a salutary influence upon the community.

The assessable value of the bonds and stocks issued by the city of New York which are exempt from local taxation appears by the stipulation of the parties to be $13,467,000; assuming that these securities are principally held by citizens of the State, it is not obvious how holders of national bank shares have any substantial ground for complaint at the exemption from taxation. These securities are taxable for State purposes. Inasmuch as national bank shares

53 are taxed at the place where the bank is located and not elsewhere, the holders of such shares have the same interest as all other tax-payers of the municipality which has created a debt in having the best sum possible realized from the obligations issued to meet it. Such obligations are exempted from taxation in the hands of the holder to enhance the value in the market and to enable the municipality to realize more from them in diminution of the burden of taxation. The holders of national bank shares derive the same benefit from the exemption as do others who are taxed upon their moneyed capital for local purposes in the same taxing district. The same observations apply measurably to the exemption of the bonds of the other municipalities of the State, although these are not taxable for State purposes, and it may therefore happen that the tax-payers of certain municipalities are to that extent compelled to contribute to taxation from which they have derived no direct benefit. This is one of those instances of inequality which illustrate the axiom that absolute equality and strict justice are unattainable in tax proceedings. The exemption is restricted to a limited class of

these obligations, and in the absence of any attempt on the part of the complainant to show that they are of any considerable amount relatively to other moneyed capital, it is to be assumed that but little importance should be attached to this exemption.

The more important exemption is that of the deposits in savings banks. The aggregate of these deposits is quite large, being in the year 1885 over $437,000,000. Savings banks in this State are not permitted to owe any depositor more that the sum of $3,000, Laws of 1878, chapter 347, section 11; and it appears by the report of the superintendent of the bank department that the average of these deposits on the first day of January, 1886, was $378 each. These deposits represent mainly the savings of people of small means. It is not probable that a twentieth part of the whole would
54 be actually reached for taxation if they were not exempt. Such accumulations tend to the extinction of pauperism, to the encouragement of economy and to the general thrift and comfort of the mass of the people. It is as much the part of a wise policy on the part of the State to encourage them as it is to encourage benevolent and charitable institutions. In the large, such an exemption reduces the burden of taxation on other moneyed capital. None of the exemptions *of* which have thus been considered manifest any unfriendly discrimination on the part of the State as between the shares of national banks and moneyed capital generally. Taken together they form a much less important part of moneyed capital generally than was exempt by the State laws in the case of Hepburn *vs.* The School Directors, where the exemption was treated as not disturbing the rule of equality of the act of Congress. Compared with the exemptions considered in Boyer *vs.* Boyer they are insignificant. It is therefore held that they are not of a character to justify the complainants' contention.

The conclusion reached is in accord with the recent decision of the court of appeals in this State *in re* McMahon *vs.* Palmer, 6 Northeastern Reporter, 400, where it was held by the court, upon a full consideration of the question presented here, that the taxing system of this State does not result in taxing national bank shares at a greater rate than is assessed upon their other moneyed capital in the hands of individual citizens of the State.

The motion for an injunction is denied.

55 *Stipulation on Final Hearing.*

United States Circuit Court, Southern District of New York. In Equity.

THE MERCANTILE NATIONAL BANK OF THE CITY OF NEW YORK

vs.

THE MAYOR, ALDERMEN, AND COMMONALTY OF THE CITY OF NEW YORK and GEORGE W. MCLEAN, Receiver of Taxes.

OCTOBER 21ST, 1886.

It is hereby stipulated and agreed by and between the parties to the above-entitled suit that for the purpose of the trial of this cause

the facts hereinafter stated are true, and that the cause be submitted for trial and decree upon such statement alone, together with the pleadings:

1. That the complainant, on the second Monday of January, A. D. 1885, and for several months prior thereto, had a capital stock of the par value of $1,000,000 and a surplus fund of $200,000; that nearly the whole of said capital and surplus fund was, during that period, invested in bonds of the United States of the par
56 value of $949,000 and of a market value and cost largely exceeding that sum; that its shares of stock were each of the par value of $100 and of the number of 10,000, and were then held by 142 persons and corporations, 50 of whom, owning 1,877 shares, were residents of States other than the State of New York, and the remainder residents of the State of New York.

2. That, on the second Monday of January, 1885, the proper tax officers of the city of New York, acting under chapter 409 of the Laws of 1882 of the State of New York, did value and assess for taxation the shares of stock of said bank against the individual shareholders thereof at the rate of $89 per share, after deducting the proportion of the assessed value of the real estate of said bank applicable to each share of stock, as by law required, making the total gross valuation of said shares in the hands of the shareholders the sum of $890,000, from which sum the debts of sundry indebted stockholders, amounting to $89,128, were deducted, as by law allowed, leaving the total valuation of said shares against said stockholders upon which taxes were thereafter assessed the sum of $800,872.

3. That, on the second Monday of January, 1885, the aggregate value of the shares of stock of the incorporated moneyed and stock corporations incorporated by the laws of the State of New York deriving an income or profit from their capital or otherwise
57 (not including life insurance companies, trust companies, banks, or banking associations, organized under the authority of this State or of the United States) amounted to the sum of $755,018,892; that "Exhibit A," hereto appended and made a part of this agreement, contains a list of the corporations whose shares of capital stock are embraced in said sum of $755,018,892, and also shows the total par value of the shares of capital stock of each of said corporations.

4. That, at the period aforesaid, the aggregate actual value of the shares of stock of the life insurance companies incorporated under the laws of this State amounted to the sum of $3,540,000, and at the same period the aggregate value of the personal property of said companies, consisting of mortgages, loans with collateral security, State, county, and municipal bonds, and railroad bonds and shares of stock of corporations (but not including the bonds of the United States nor the shares of corporations created by the State of New York), amounted to $195,257,305; all of which is shown in detail in the schedule hereto annexed, marked "Exhibit B."

5. That, at the said period, the aggregate actual value of the shares of the capital stock of the trust companies existing in the State of New York and organized under its laws amounted to $32,018,900, as is

shown in detail in the schedule hereto annexed, marked "Exhibit C," of which sum the amount of $30,215,900 was of trust
58 companies located in the city of New York.

6. That, at the same period, the aggregate actual value of the deposits due by the savings banks of this State to depositors was $437,107,501 (not including the surplus accumulated by the said corporations, amounting to $68,669,001).

7. That the aggregate actual value of the bonds and stocks issued by the city of New York, subject to the provisions of chapter 552 of the Laws of 1880, at the said period, amounted to $13,467,000.

8. That the aggregate actual value at the same period of the shares of stock of corporations created by States other than the State of New York, owned by the citizens of the State of New York, amounted to at least the sum of $250,000,000.

9. The assessed valuation of all personal property, after making the deductions allowed by law, in the city of New York (at the said period), as shown by the annual record of the assessed valuation of real and personal estate of the said city for the year 1885, was $202,673,806. This sum included the capital of corporations (after making deductions for investments thereof in real estate, shares of New York corporations, taxable upon their capital stock under the laws of this State, and non-taxable securities), as follows:

59

Insurance companies	$2,146,379
Trust companies	156,506
Miscellaneous companies	29,234,409
Railroad companies	12,339,871

It also included:

Shares of national banks	45,046,074
Shares of State banks	15,700,220

The sum so deducted for the value of the real estate belonging to said trust companies located in the city of New York did not exceed $2,336,572.31.

The assessed value of the real estate in said city for said period is	$1,168,448,137
And in the said State, including the city of New York, is	2,761,973,845
The latter sum including the sum of about	340,000,000

being the assessed value of the real estate located in said State belonging to corporations.

The "aggregate amount of the taxable personal estate" within the State of New York, exclusive of said city, after deducting debts due by the owners thereof for the year ending December 31, 1884, as assessed by the assessors and returned to the State comptroller, is $151,632,369.

This sum included the capital of corporations (after making the deductions for investments thereof in real estate, shares of New

60 York corporations, taxable upon their capital stock under the laws of this State, and non-taxable securities) of the amount of $34,466,612.

The aggregate capital stock, taken at par, of the national banks outside of the city of New York, but within the State of New York, on December 20, 1884, as shown by the report of the Comptroller of the Currency of the United States, was	$36,804,160
And that of State banks, outside of the said city, but within said State, as shown by the report of the bank superintendent of New York, is	8,128,000
Total (outside of New York city)	$44,932,160
The total par value of the shares of national banks in said State, including the city of New York, for the period aforesaid, is	$83,054,160
And of the State banks	32,815,700

10. That it is the intention of the defendants, unless restrained by injunction, to collect the said tax levied by them against the shareholders of the said complainant upon said shares by the use of all needful legal process.

11. That any statutes of the United States or of the State of New York may be cited and relied upon before the said court as if herein fully set forth.

BROWN & WELLS,
Solicitors for Complainant.
E. HENRY LACOMBE,
Counsel to the Corporation, Solicitor for Respondents.

61 EXHIBIT A.

Railroad Companies.

Name.	Capital stock, par value.
Adirondack	$2,600,000
Albany & Susq.	3,500,000
" & Vermont	680,000
Amst. Chuc. & North	20,000
Avon Gens. & Mt. Mrrs.	225,000
Addis. & N. Penn.	600,000
Boston & Albany	20,000,000
" & Hoosac T. & W.	3,551,000
Brooklyn, Flatbush, & C. I.	496,150
" & Rockway Bch.	147,500
Buffalo Creek	250,000
" & Transfer	5,000
" & Erie Basin	13,503
" Bradfd. & Pittsburg	2,286,400
" N. Y. & Erie	950,000
" " & Phila.	20,319,522
" & S. W.	943,666

	Name.	Capital stock, par value.
	Brooklyn & Montauk	p 1,100,000 c 900,000
	Cay. & Susq.	589,110
	Chateaugay	75,000
	Chemung	380,000
	Clove Branch	150,000
	Conesus Lake	200
	Cooperstown & Susq.	308,405
	Corng., Cowan. & Antrim	2,000,000
	Connectg., termnl.	20,000
	Dnk., Alleg. V. & Pitts.	1,300,000
	Elmira, Jeff. & Canan.	500,000
	" & Wmspt.	1,000,000
	Fonda Justn. & Glovsvl.	300,000
	Geneva, Ithaca & Sayre	1,675,000
	" & Lyons	15,000
	Glens Fall	96,639
	Goshen & Deckrtn.	96,190
	Greene	200,000
	Greenwich & Jnsnol.	118,000
62	Har. Riv. & Pt. Ches.	42,160
	Htfd. & Conn. Western	2,530,700
	Herk., Npt. & Poland	119,820
	Island	200,000
	Kaaterskill	100,000
	Lake Champ. & Moriah	200,000
	" Shore & Mich. S.	50,000,000
	Lehigh & Hud. R.	1,340,000
	" Lehigh Valley	402,400
	Lockport & Buf.	127,000
	Long Island	10,000,000
	" City & Flushing	500,000
	Marine	50,000
	Mdldetn. & Crahfd.	122,200
	" Unionv. & Wtrg.	149,850
	Montgom. & Erie	150,000
	N. Y., Bay Ridge & Jam.	150,000
	" & Canada	4,000,000
	" Cen. & Hud. R.	89,428,300
	" " & Niag. R.	28,100
	" Chicago & St. Louis	C 28,000,000 P 22,000,000
	" City & N.	2,990,000
	" & Flushing	200,000
	" Lacka. & W.	10,000,000
	" L. E. & W.	C 77,583,800 P 8,156,700
	" & Harlem	9,450,000
	" & N. E.	20,000,000
	" & N. H. & H.	15,500,000

Name.	Capital stock, par value.
N. Y., Ont. & Westn.	60,113,982
" Penn. & O.	44,999,350
" & Sea Bch.	500,000
" W. S. & B.	40,000,000
Niag. Bridge & Canan.	1,000,000
" Falls Branch	250,000
N. of N. J.	1,000,000
Niack & N.	78,250
N. Y. & Long Beach R. R.	391,900
Ogdens. & L. Chm.	3,077,500
Olean Bdfd. & War.	150,000
63 Oswego & Syracuse	1,320,400
" & Rome	300,000
Perry	8,253
Renss. & Sara.	6,854,100
Roches. & Gen. V.	555,200
" & Lake O.	65,000
" & Pitts.	20,000,000
Rome & Clinton	345,360
" Wtrtn. & Ogdens.	5,293,500
S. I. Rapid Transit	500,000
Sara. & Schenec.	450,000
" Lake	282,900
" Mt. McGreg. & Lake George	600,000
Scho. Valley	100,000
Silver Lake	120,127
Skaneateles	77,800
Sodus Bay & Sthn.	500,000
Spuyt. Duyv. & Pt. Morris	989,000
Staten Island	210,000
Stoney Clove & Catsk. N.	100,000
Susp. Bdge. & Erie J.	500,000
Syr., Bing. & N. Y.	2,500,000
" Gen. & Cang.	1,200,000
Tioga	580,900
Troy & Benn.	150,800
" & Grnbsh.	274,400
Ulster & Dela.	1,250,000
Union	50,000
Utica & Blk River	2,047,000
" Chen. & Susq. V.	4,000,000
" Clin. & Bing.	636,000
Valley	750,000
Walkill Valley	330,000
Elevated railroads:	
Manhattan Cons.	26,000,000
Railroad companies:	
Total par value	$651,354,037
Total actual value	316,361,722

64 *Street Railroad Companies.*

Name.	Capital stock, par value.
Albany	$200,000
Amsterdam	15,000
Ast. & Hunter's Pt.	75,000
Atlantic Ave.	652,600
Blkr. St. & Ful. F.	900,000
B'way & Bowery B.	30,000
B'way (B'klyn)	350,000
" & 7th Ave.	2,100,000
Brooklyn city	2,000,000
" & Newtown	1,000,000
" & Crstn	197,700
Bushwick	500,000
Bing. & Pt. Dick.	26,764
Central City	21,130
" Crstn.	600,000
Cen. Pk., N. & E. R.	1,800,000
Chris. & 10th St.	650,000
C. I. & B'klyn	76,908
Cortl'd & Homer	13,710
Dry D., E. B'way, & Bat.	1,200,000
Dunk. & Fred.	36,855
Eighth Ave.	1,000,000
Elmira & Horseheads	44,000
Fifth Ward	29,575
42 St., G. St. F.	748,000
Fkft. & Ilion	14,275
Gen. & Water St.	42,500
G'd St. & Newtown	170,000
Har., B., Morr., & Ford.	300,000
Herk. & Moh.	17,000
Hous., West. St., & Pav. F.	250,000
Jastown	13,665
Jam. & B'klyn Rd. Co.	197,480
Johnstn., Glov. & Kings	50,000
Kingst'n City	50,000
Lansgbg. & Cohoes	15,000
L. I. City & Newt'n	100,000
Mohawk & Ilion	15,000
65 N. B. & O. Valley	8,000
N. Wmsbg. & Flat.	300,000
Niag. Falls & Sus. B.	36,887
Ninth Ave.	797,320
Olean	100,000
Pros. Pk. & C. I.	250,000
" & Flat.	50,000
Roches. City & Br.	500,000
Second Ave.	1,861,833

Name.	Capital stock, par value.
Sixth Ave.	750,000
S'th B'klyn	125,000
Stnwy. & Hunt. Pt.	60,000
Stillw. & Mech.	10,000
Syrac. & Geddes	25,000
Syrac. & Onon.	37,000
South Ferry	150,000
Third Ave.	2,000,000
Troy & Albia	44,700
" & Cohoes	50,000
" & Lansing	250,000
Twenty-third St.	600,000
Utica & Mohawk	40,350
Van Br't & E. Basin	75,000
Waterford & Cohoes	21,025
Wash. St. & State Asy.	25,000
Wtrvliet. T'npike	240,000
Street railroad companies:	
Total par value	$23,909,277
Total actual value	37,907,563

Insurance Companies.

Name.	Capital, par value.
Agricultural	$500,000
Albany	200,000
American Fire	400,000
" Exchange	200,000
" Broadway	200,000
" Brooklyn Fire	153,000
" Buffalo German	200,000
Citizens'	300,000
City Fire	240,000
Clinton Fire	250,000
Commerce	200,000
Commercial	200,000
Continental	1,000,000
Eagle Fire	300,000
Empire City Fire	200,000
Exchange Fire	200,000
Farragut "	200,000
Firemen's	204,000
Franklin & Emp.	200,000
German American	1,000,000
Germania Fire	1,000,000
Glens Falls	200,000
Globe Fire	200,000
Greenwich	200,000

Name.	Capital, par value.
Guardian Fire	200,000
Hamilton Fire	150,000
Hanover Fire	1,000,000
Home	3,000,000
Howard	500,000
Jefferson	200,000
Kings Co. Fire	150,000
Knickerb. "	210,000
Lafayette "	150,000
Long Island	300,000
Mnfrs.' & Builders'	200,000
Mechanics' Fire	250,000
Mercantile "	200,000
Merchants'	200,000
Montauk Fire	200,000
Nassau Fire	200,000
National Fire	200,000
N. Y. Bowery Fire	300,000
N. Y. Equitable	210,000
N. Y. Fire	200,000
Niagara Fire	500,000
North River	350,000
67 Pacific Fire	200,000
Park "	200,000
People's Fire	200,000
Peter Cooper Fire	150,000
Phœnix	1,000,000
Reassurance	200,000
Rochester German	200,000
Rutgers Fire	200,000
Standard Fire	200,000
Star "	500,000
Sterling "	350,000
Stuyvesant	200,000
Union Fire	100,000
U. S. Fire	250,000
Westchester Fire	200,000
Wmsbg. City Fire	250,000
Insurance companies :	
Total par value	$21,287,000
Total actual value	$28,012,100

Express Companies.

Name.	Capital stock, par value.
Adams	$12,000,000
American	18,000,000
United States	7,000,000
Wells & Fargo	6,250,000
Express companies:	
Total par value	$43,250,000
Total actual value	$42,882,500

68 *New York and Brooklyn Gas Companies.*

Name.	Capital stock, par value.
Brooklyn Gas Light	$2,000,000
Citizens' " " Bk	1,200,000
Harlem	2,000,000
Manhattan	4,000,000
Metropolitan	2,500,000
Mutual N. Y.	3,500,000
Nassau, B'klyn	1,000,000
" Scrip	700,000
New York	4,000,000
People's, B'klyn	1,000,000
Williamsburg	1,000,000
Metropolitan, B'klyn	1,000,000
Municipal	3,000,000
Fulton Municipal	3,000,000
Equitable	2,000,000
Gas companies:	
Total par value	$31,900,000
Total actual value	$49,504,000

Miscellaneous Corporations Whose Stocks Have Reported Market Values.

Name.	Capital stock, par value.
Gold & Stock Tel. Co.	$5,000,000
Internat. Ocean Tel.	3,000,000
Mexican Cable	1,194,000
N. Y. Mut. Union	2,500,000
Postal Tel. & Cable Co.	7,000,000
Am. Spkg. Telephone	1,800,000
Hud. Riv. Telephone	2,000,000
Metrop. Telephone	1,000,000
N. Y. & N. J. Telephone	2,400,000
New Engd. "	10,394,000
N. Y. & Penn. "	1,000,000
S'th'n Bell "	1,000,000

	Name.	Capital stock, par value.
69	Brush Illumintg. Co.	1,000,000
	Daft Electric Co.	500,000
	Edison Electric Light	1,080,000
	" Isoltd. Lt.	1,000,000
	" Illum. Co.	1,000,000
	" Europ. Elec. Lt. Co.	2,000,000
	U. S. Electric Lt. Co.	1,500,000
	" Illum. Co.	1,000,000
	W. U. T. Co.	80,000,000
	Am. Telep. & Cable Co.	14,000,000
	B. & M. Tel. Co.	3,000,000
	Cent. & S. Amer. Cable Co.	4,000,000
	Com. Teleg. Co.	*c* 2,000,000
		p 200,000
	D. & H. Canal Co.	23,500,000
	Pacific Mail	20,000,000
	Panama R. R.	7,000,000
	N. Y. & Texas Land Co.	1,500,000
	Iron Steamb't Co.	2,000,000
	R. R. Equipment Co.	900,000
	Union Ferry Co.	1,000,000
	Albany Gas Lt. Co.	250,000
	Am. Dist. Tel. Co.	3,000,000
	Miscellaneous corporations:	
	Total par value	$209,784,000
	Total actual value	133,592,830

Corporations Reporting for Taxation to the State Comptroller not Included in Other Lists.

	Name.	Capital stock at par value.
	Albany, Scho. & Rens. Pl. Rd.	$51,866
	" Safe Deposit & Storage	10,000
	" & Greenbush Brdg	600,000
	" & Mohawk Plk. Road	Unknown.
	" & Sandlk. Plk. Rd.	33,950
	" & Troy St'mb't	80,000
	Albany Electric Illum.	255,000
70	Atlantic Dredging	75,000
	" Mining	980,000
	Atlantic Dock	1,000,000
	American Dock & Trust	523,600
	" Gas, Fuel & Light	3,000,000
	" Horse Exchange	140,000
	" News	594,960
	" Rapid Telegraph	4,000,000
	" Real Estate Exchg	300,000
	" Trading	100,000

Name.	Capital stock at par value.
American Bag Loaning	125,000
" Dist. Teleg. (B'klyn)	200,000
" " " (Elmira)	4,000
" " " (Syracuse)	2,000
" " " (Troy)	10,000
" Cotton Oil	200,000
" Contract Dredging	1,000,000
" Finance	285,500
" Machin. Pub. Co.	50,000
" Merc. & Collect. Asn.	8,000
Art Exchange	42,800
Annex Impt.	2,225
Andes Water	6,000
" & Delhi Teleg.	2,500
Adir., N. Y. & N. E. Ex.	50,000
Anchor Oil	1,000,000
Auburn Water Works	224,000
" Gas Light	150,000
Albion Gas "	40,000
Avon Water	13,600
Ausable Plk. Road	26,950
Auburn & Flem. Plk. Rd.	22,000
Argyle & Ft. Edw. Plk. Rd.	9,600
Ausable	40,000
Bradstreet	373,800
B'klyn Lead Mining	500,000
Buf. Gas Lt.	500,000
B. & O. Teleg.	Not. rep.
Barcel. Aptmt. Assn.	105,000
Bath Gas	24,975
Brush Elec. (Roches.)	194,000
71 Bull Domingo Min.	200,000
Batav. Gas Lt.	32,500
Bains Tea & Coffee	50,000
Barret Bridge	25,000
Bankers' Safe Dep.	100,000
Braubant Plk. road	8,000
Bellestr. Journal Pub.	25,000
Brewers' Ice	150,000
Bell Telep. (Buffalo) cash	179,400
Berry Cattle Co. (Ltd.)	195,000
Bishop's Der. Elev.	50,000
Brigham Hall	50,000
Br. Beh. Racing Assn.	25,000
" Pier & Nav.	250,000
Bingham. Gas Lt.	50,000
B'klyn Acad. of Music	200,000
" Athen. & Rdg. Room	60,000
" City Safe Deposit	97,000

Name.	Capital stock at par value.
B'klyn Dist. Tel. Co. (Ltd.)	191,975
" Ridg. Acad.	16,000
" & C. I. Tel.	5,000
Brockp't Gas Lt.	25,000
Buffalo Bd. of Trade	185,000
" Herdic & Phaeton (Ltd.)	14,625
" Ins.	200,000
" Mut. Gas Lt.	750,000
" & Idaho Gold & Sil. Mg.	107,270
Brush Elec. Lt. (Buf.)	134,450
Business Address	10,000
Brush Elec. Lt. & Power	14,820
Canan. Gas. Lt.	50,000
Cent. Mining	10,000
Celluloid Mfg.	500,000
China & Japan Tradg. (Ltd.)	700,000
Castner & Co. (Ltd.)	10,000
Campbell's Creek Coal	104,460
Chateaugay Water Wks.	10,000
Cheney's Towg. Line	200,000
Cicero Tnpke.	4,600
Citizens' Gas Lt. (Warsaw)	15,350
" " (Po'k'psie)	250,000
Citizens' Steamboat	250,000
72 Consumers' Ice	250,000
Coeymans & West. Plk. Rd	15,000
Coalbg. Land & Mng.	100,000
Cohoes Lansgbg. Bdge.	35,000
" Co	500,000
" Gas Lt.	50,000
College Pt. Gas	10,000
Columbia Tnpke.	25,000
C. I. & Rock. Pat. Rl. Cst. (Ltd.)	5,000
Columb. Spec. Pub.	400
Comm. Nav.	5,000
" Agency	100,000
" Adver. Assn.	14,000
" Fire Ins.	200,000
" Trust	116,000
" Telegram	107,500
C. I. & Rway.	60,000
Chautauqua Stmbt.	35,000
Catsk. & Alb. Stmbt.	80,000
Cairo Bridge	3,145
Charlotte "	10,275
Catsk. & Hud. Stmbt. Ferry	15,000
" & Mtn. Tnpke.	5,000
Canal & Lake Stmbt.	70,000
Catskill Mtn. House	25,000

Name.	Capital stock at par value.
Cayadut. Plk. Rd	10,000
Canan. Lake Stm. Nav.	30,000
Cen. Amer. Catchouc.	24,000
" Cafe Co. (Ltd.)	7,500
" City Railway	50,000
" Gas Lt.	444,000
" & Mechan. Assn.	150,000
" N. Y. Telep. & Teleg.	500,000
" Safe Deposit	93,600
Chemung V. Mut. Loan Assn.	150,292
Cent. Tunnel R'way	10,000
Centaur	25,000
Cheever Ore Bed	50,000
Cherry V. Creek Plk. Rd	8,000
C. I. Fire & Gas Lt.	155,300
C. I. Jockey Club	350,000
73 Corning Gas	9,000
Cong. & Empire Spg.	1,000,000
Conesus L. Transfer	1,100
Consumers' Gas (Nbg.)	200,000
Co-operat. Aqued. Assn.	3,320
Cornell Steamboat	500,000
Cardova Aptment Assn.	120,000
Chucta. Gas Lt.	50,000
Crump Label	50,000
Crystal	16,000
Crooked Lake Navig.	12,000
Clyde Gas Lt.	25,000
Citizens' Gas (Buffalo)	300,000
Col. Cent. Cons. Ming.	3,000,000
Contractors' Assn.	50,000
Comm. Telep.	50,000
Cons. Fruit Jar	500,000
Dansville Gas Lt.	25,000
Davis Oil	50,000
Deer Pk. & Minnisink Tnpk.	4,000
Delhi Water	26,000
Delaware Tnpke.	5,000
De Bary, Baya Mchnts' Line	122,500
Delhi & Stanfd Teleg. Co.	3,000
Dorche. Union Free St.	100,000
Dutchess Tnpke.	65,000
E. River Gas Lt.	Not given
E. Chester " Co.	50,000
Erie Teleg. & Telep.	4,800,000
E. Riv. Driv. Pk. & Fr. Assn.	1,000
E. Union Teleg.	950
E. Albany Gas Lt.	50,000
E. River Ferry	375,000

Name.	Capital stock at par value.
Eden Musee Am. (Ltd.)	329,000
Elect. Constr. & Sply.	120,000
Enterp. Transit (Ltd.)	50,000
Elmira Gas Lt.	50,000
" Water Works	200,000
" Silver Mng.	100,000
Empire Gas (Bolivar)	1,000,000
Empire State Tel. & Tel.	109,080
74 Elmira St. Line R. R.	90,200
Equitable Merc	5,040
Export Lumber (Ltd.)	500,000
Fidel & Cas. Ins.	250,000
Flushing Gas Lt.	41,000
Frankvl. Agr. & Driv. Pk. Assn.	3,250
Fall Brook Coal	100,000
Faytvl. & Syr. Plkrd. & Ter.	24,000
Farmers' Hall Asn.	1,600
Flatbush Gas	55,000
Franco-Am. Trad. Co. (Ltd.)	250,000
Farmers' Milk	15,966
Flatbush Plkrd	15,000
" Water Works	200,000
Fishkill & Matt. Gas Lt.	20,000
Fst. Grt. Westn. Tnpke	
Fifth Ave. Carpet	12,500
Fireman's Trust Ins.	150,000
Forest of Dean Iron Ore	400,000
Fort Miller Bridge	11,250
Forest & Stream Pub.	45,000
Ft. Hunter Susp. Bdge.	10,375
" Edwds. Water Works	5,800
Fulton Co. Coal	105,000
Fulsom Ldg. Cent. Bdge.	11,500
Fulton Gas Lt.	15,900
Fruit Mchts. S. S. Asn.	20,000
Fultonv. & Jonst. Plkrd.	18,750
Grain Warehousing	80,000
Gas Lt. of Syr.	330,000
Gravesend Bdge & Road	6,000
Garrisn. & Wst. Pt. Ferry	25,000
Gamewell Fire Alm. Tel.	1,750,050
Greeport Wharf	6,000
Gas Lt. of Waverly	50,000
Greenfd. Centre Stock	2,000
Green Mtn. Gold Mng. (Cal.)	1,250,000
Genesco Gas Lt	16,000
Great Westn. Marine Ins.	662,080
" Neck Dock	4,000
Glen's Falls & L. Geo. Plkrd.	24,000

	Name.	Capital stock at par value.
75	Geneva Water Works	20,000
	" Gas Lt.	26,387
	Glen's Falls Gas Lt.	35,000
	" " Transpt.	37,000
	Green Isld. Impt.	202,700
	" Pt. Ferry	160,000
	Gilboa Aqueduct	550
	Gouverneur Water Wks.	16,000
	Gold Cup Ming. & Smeltg.	107,500
	Gnome Mining	100,000
	Goshen Gas Lt.	25,000
	Hong Kong & Shang. Bkg	50,000
	Howe Machine	25,000
	Hall-Anderson Gld. Mng	150,000
	Haile Gold Mng.	100,000
	Haverstraw Barge	5,000
	Half-Moon Bridge	12,000
	Harlem R. R. R.	1,030
	Hallowell Granite	2,000
	Hempstead Gas Lt.	23,146
	" & Jam. Pl. Rd.	31,000
	Herdic Coach (Ltd.)	10,000
	Highld & Moden Tnpk. Rd.	12,175
	" Pk. Assn.	1,454
	Homer Ramsdell Transp.	100,000
	Hornellsville Water	28,125
	Holmes' Elect. Protect.	1,000,000
	Hoosick Falls Gas Lt.	30,000
	Holmes' Bglar. Alm. Tel.	150,000
	Homer & Courtld. Gas Lt.	50,000
	Hudson River Line	125,000
	" Gas	50,000
	" Aqueduct	14,000
	" River Ice	84,000
	Ithaca Water Wks.	100,000
	" Gas Lt.	72,500
	Irene Mill & Mining	26,100
	International Bridge	1,499,900
	Ide & Haverstick	10,000
	Ilion & Mohawk Gas Lt.	30,000
	Imptrs & Grocers Ex. (N. Y.)	3,750
76	Jamaica Gas Lt.	40,000
	Jastown. Gas	65,000
	Jastown. Water Supply	30,000
	Jericho Plkrd	25,025
	Jerome Pk. V. Site & Imt.	750,000
	Jonstown Gas Lt.	17,650
	Keuka Nav.	6,400
	Keesvl. & Pt. Kent Plkrd.	5,000

Name.	Capital stock at par value.
Kingston Bldg.	33,065
Knickbr. Gas Lt.	1,500,000
Knickbr. Ice	2,000,000
" Steamboat	140,000
Lockport Gas Lt.	40,000
Lake St. Bldg. Assn. (El.)	23,350
Lake George, Warrensburg Plank Road	15,375
La Plata Mining & Smelting	2,000,000
Lisbon Apartment Assn.	105,000
Lincoln Safe Deposit	300,000
Little Falls Gas Light	24,100
Lockport & Wright's Corners Plank Road	5,400
Lockport Hydraulic	152,000
Long Island Improvement (Limited)	475,000
Long Island Home Hotel	60,000
Lockport & Cambria Plank Road	12,000
Lockport & Corners Plank Road	12,000
Long Island Safe Deposit	200,000
Lloyd's Plate Glass Insurance	100,000
Lyon's Gas Light	12,800
Lake Conesus Ice	5,000
" Milk	5,000
" George Stmbt	25,000
" " Warrnsbg Plk.	15,375
Lexgtn. Westkl. & Shand. Tel.	900
Le Roy Gas Lt	25,000
Live Stock Assn. (N. Y. Ltd.)	40,000
Metrop. Plate Glass Ins.	100,000
" Stmship	500,000
Manhat. Dist. Tel., City	30,000
" Polo Assn. (Ltd.)	20,000
Manhat. Real Est. Assn.	750,000
77 " Shipping (Ltd.)	50,000
" Transpt.	60,000
Mckrl. Litrge. & Transpt.	24,000
Manlius & Delhi Plkrd.	18,150
Maritm. Reg. Pub. Co. (Ltd.)	90,000
Mahopac Iron Ore	100,000
Malone Gas Lt.	19,400
Mapes Formula & Peruv. Gu.	100,000
Malone Water Works	35,000
Madrid Apt. Assn.	192,500
Manlius Plkrd.	14,600
Mechan. & Traders' Fire I.	200,000
Mchnts.' Protect. (Ltd.)	2,500
Metrop. Impt. (Ltd.)	335,000
" Opera H., of N. Y.	1,050,000
Medina & Ala. Plkrd.	29,250
" Gas Lt.	29,250

Name.	Capital stock at par value.
Mdletn. & Delhi Tnpk	4,000
Mike & Starr Gold & Slv. M.	1,000,000
Middlebg. Bdge	6,500
Middletn. & Wtzboro.' Tnpk	4,000
Minden Gas Lt.	10,500
Mining Record Prt. & Pb.	50,000
Mdletn. Gas Lt.	20,000
Montauk Assn.	15,000
Moresville Tnpk.	2,000
Mohawk V. Hotel	20,000
Moultrie Mining	100,000
Monte. & Wht. L. Tnpke.	2,750
Morris & Cummings Dredg.	125,000
Mt. Hope Iron	150,000
Mont. & Wtzboro.' Tnpke	23,000
Munic. Gas Lt. (Roches.)	500,000
" " " Yonkers	125,000
Mut. Benefit Ice	250,000
" Dist. Mess. (Ltd.)	7,500
" " Tel.	93,600
Montauk Gas Coal	2,500,000
Nat. & Scho. Show As., of A.	100,000
" Ice Co., of N. Y.	250,000
Nat. Mining	20,000
78 Nat. Mining & Exploring	200,000
" Transit	31,819,000
Nat. Tel.	1,000,000
Nashawan Mfg. Co.	9,000
Navassa Phosphate	70,000
Nassau Ferry	150,000
" Trading (Ltd.)	20,000
Neuchatel Asphalt (Ltd.)	20,000
Newbg. Marine Rwy.	13,000
" & Colches. Tnpk.	105,595
" " New Wndsr. Tnpk	6,370
N. J. Stmbt.	2,000,000
N. Paltz Tnpke.	15,000
N. Y. Cattle (Ltd.)	132,500
" Cent. Sleepg. Car	1,550,000
" Coffee Exchg	3,000,000
" Ferry	1,000,000
" Catsk. & Athns. (Ltd.)	110,000
" Cab Co.	50,000
" Cafe Co.	3,000
" City Ice	250,000
" Coal Tar Chem.	275,000
" Dairy (Ltd.)	20,000
" Daily Bullet. Assn.	50,000
" Floatg. Elev.	100,000
" " Dry Dock	350,000

Name.	Capital stock at par value.
N. Y. Lightge. & Transpt.	20,000
" Loan & Impt.	3,000,000
" Naval Strs. & Tob. Ex.	4,000
" Real Est. Assn.	1,000,000
" Stock (Ltd.)	10,000
" Stock Ex. Bldg.	350,000
" Safety & Stm. Power	60,000
" Steam Power	100,000
" Steam Dredg.	125,000
" Transfer	480,000
" Warehousing	200,000
" & Balt. Coffee Pol.	3,000
" & C. I. Obser. & Sig.	100,000
" & Charlest. S. S.	189,000
N. Y. & Hudson Stmbt.	75,000
79 " & L. Cham. Transpt.	45,000
" & N. J. Globe Gas (Ltd.)	50,000
N. Y. & N. J. Tunnel R. R.	3,825
" & Phila. Coal & S. Tr.	60,000
" & Saug. Trans.	12,000
" & Verm. Tel. & Tel.	12,309
Niag. Grape	6,000
" Gas	63,200
" Falls Hy. Pwr. & Mfg.	65,000
" Internat. Bdge.	250,000
" Falls Pros. Pk.	280,000
" " Susp. Bdge.	200,000
" " Water Wks.	40,000
" Riv. Bdge.	12,530
N. Hmstd. Fl. Tnpk. & Bdge.	24,400
N. Boatmns. Trans.	2,350
N. Gas Lt.	125,000
N. N. Y. Tel. & Tel.	6,000
Nyack Water Wks.	100,000
Oswego Canal	10,000
" Gas Lt.	101,475
Ocean Nav. & Pier	250,000
Ogd. Coal & Towing	25,000
" Gas	100,000
Oneonta Water Wks.	40,000
" & Frank. Tnpke.	2,650
Oneida Gas Lt.	25,000
" St. Ltg., Utica (Ltd.)	15,000
Oswego N. School Bdg. H.	16,200
" R. R. Bdge.	250,000
" Water Wks.	229,500
Owego Gas Lt.	47,300
" Water Wks.	100,000
Orient Wharf	12,000

	Name.	Capital stock at par value.
	Old Dom. Cop. Min.	3,000,000
	Our. H. Hyg. Ins. Danvl. N. Y.	100,000
	Oysterman's Dock (Ltd.)	2,000
	Piety H. G. & S. Mng.	96,958
	Prod. Cons. Ld. & Petr.	1,043,596
	Pt. Henry Towg.	30,000
	Pt. Henry Iron Ore	200,000
80	Pawlg. Bkmn. Tnpke.	3,050
	Patterson Staty. G. F. (Ltd.)	20,000
	Passaic Chem.	130,000
	Palmyra Gas Lt.	20,000
	Pltsbg. Gas	50,000
	Pre-emption Pk. (Ltd.)	7,500
	Peconic Pk. Impt.	1,000,000
	Pelham Hod Elev.	100,000
	Premium Pt.	32,500
	Pkskill Gas Lt.	31,000
	Pleasure Isld (Ltd.)	65,000
	Penn Coal	556,834
	" Yann Gas Lt.	24,750
	Peoples' Ferry	50,000
	" Gas, of Albany	50,000
	Ptrs. Crnrs. Merc. Assn.	5,300
	Pokespie Gas Lt.	84,000
	" Transpt.	100,000
	Pt. Jervis Gas Lt.	20,000
	" " Water Wks.	45,000
	" Ches. Trans.	16,000
	" Morris Ld. & Impt.	460,000
	Pros. Pk. Hotel (Catsk.)	160,000
	Put. Co. Ice (L. Mahop)	50,000
	Roches. Gas Lt.	600,000
	Randlph.	108,199
	Remgt. Sewg. Mch. Mf. (Ltd.)	100,000
	Renss. & Colum. Tnpke.	32,000
	Resum. Mng. & Smltg.	500,000
	Reed & Powell Trans. (Ltd.)	75,000
	Ret. Dlrs. Prot. Assn.	93,700
	Rexfd. Flats Bgde.	7,000
	Ridgewood Ice	140,000
	Rchmd. Co. Gas Lt.	348,650
	Rhinebk. & Kstn. Ferry	80,000
	" Gas	8,000
	Roches. Bag. & Trans.	30,000
	" Drivg. Pk.	47,000
	" Elect. Lt.	17,650
	" Ld. & Stk. (Ltd.)	50,000
	Roches. & Charlte. Tnpke.	20,000
81	" & Gates Plkrd.	18,000

Name.	Capital stock at par value.
Roches. & Hemlk. L. Plkrd.	44,700
Roches. & Pittsfd Plkrd.	21,000
Roger Wheel	50,000
Rondt. & Kngstn. Gas Lt.	65,000
Rome Gas Lt.	35,000
" & Madsn. Plkrd.	7,500
Romer & Temper Stmbt.	300,000
Rye & Pt. Ches. Gas Lt.	25,000
Sara. Asn. Impt. Brd. Hrs.	50,000
" Gas	40,000
" Lake Ice	1,200
" " Brdge.	4,000
" Vichy Spring	50,000
S. I. Pub.	6,000
" Telep.	135,000
" Water Supply	200,000
Safe Dept. of N. Y.	283,300
Salamanca	10,000
Stamfd. Water	14,600
Saug. Gas Lt.	32,000
Sandy Hill Quarry	80,000
" " & Adamsv. Pkd.	7,400
" " & City I. Tel.	52,631
Stat. Bd. of Trade	1,760
Sag Harb. & Blshd. Tnpk.	5,400
Salina & Cen. Sq. Pkd.	29,725
Sen. Falls & Watl. Gas Lt.	80,000
" Lake Stm. Nav.	25,000
Shelter I. Pk.	150,000
Sidney Bdge.	4,000
Spg. V. Hy. Gold	213,489
Schen. Gas Lt.	100,000
" Water	100,000
Stlwtr. & Shagtk. Bdg.	6,000
Sid. & Unadilla Bdge.	4,350
Sing Sing Gas Mf.	22,500
St. Jos. Lead	1,000,000
Sodus Bay Elev.	70,000
S. Beth. Pkrd.	2,110
S. Tier. Mng.	None but property
82 Schuyvl. Bdge.	4,500
Schuys. Stmbt Line	100,000
Stuyv. Safe Dep.	200,000
Sturges Elev.	50,000
Sun Mut. Ins.	500,000
Susq. Tnpke Rd	116,000
Syracuse Water	440,000
" & Jasville Pkrd.	11,650
" & Liverpool "	5,000

Name.	Capital stock at par value.
Standard Silk	100,000
Smith (A. E.) Sons' Poty.	18,000
Tarytn. & Irvingtn. U. Gas	100,000
Tilly Foster Iron Mines	500,000
Ticond. Water Wks.	20,000
Troy Cits. Gas Lt.	263,350
" Gas Lt.	300,000
" & Sdlke. Tnpk.	16,000
" & W. Troy Bdge.	150,000
Thousand Isd. Pk. Assn.	15,000
" Stmbt.	40,000
Turkey Red Oil Mfg.	25,000
Umad. V. S. B. Assn.	10,000
U. S. Mere. Rptg.	100,000
U. S. Rolling Stock	5,000,000
" Warehouse	300,000
Union Bdge	80,000
" Drdg.	30,000
" Ferry	1,000,000
" Gas Lt.	75,000
" Plkrd.	10,000
" Stykd. & Mkt.	200,000
" Stmbt.	1,000,000
" Tnpke.	4,000
" Tel. & Tel.	100,000
" Terminal R. R.	302,500
" Wharf	4,000
Univ. Butnh. Attchmt.	50,000
Univ. Pub.	500,000
Univ. Beer Keg	120,000
Utica Water Wks.	300,000
Untd. Magd. Stm. Nav.	480,000
83 Untd. Verde Copper	3,000,000
Utica Gas Lt.	80,000
United Brass	745,000
Veta. Madre. Mg. & Red	500,000
Warsaw Water Wks.	20,250
Warw. V. Frms. Mlk. Asn.	12,000
Walton Water	15,000
Wtrtn. Gas Lt.	100,000
Wall St. D. Nws. Pub.	25,000
Warbrtn. Hall Assn.	60,000
Washgtn. Pk. Assn.	12,000
" St. Refrg. Whse.	16,000
Waverly Water	20,000
" & State Line R. R	10,000
Wellsville Water	30,000
Weed Iron	200,000
Wtrvl. Opera H. (Ltd.)	15,000

Name.	Capital stock at par value.
West Troy Gas Lt.	50,000
" " Water Wks.	100,000
Westn. Plkrd.	18,950
" Transpt.	400,000
Whthall Gas Lt.	12,000
Wht Plns. "	25000
" Hall & Grnv. Tnpk.	12,820
Yonkers Gas Lt.	200,200
Miscellaneous corporations (comptroller):	
Total par value	$147,390,501
Total actual value	142,615,103

84 *Mining Companies.*

Name and location.	Number of shares.	Value held in New York.
Alta S. M., Nev.	108,000	$1,026
Boston and Mon. G. M., Mon.	200,000	400,000
Bonanza King M., Cal.	100,000	25,000
Bobtail G. M., Cal.	227,326	28,415
Breece M., Col.	200,000	21,000
Col. Central Con. M., Col.	300,000	675,000
Chrysolite S. M., Col.	200,000	100,000
Copper Queen M., Ariz.	250,000	125,000
Chollar M., Nev.	112,000	1,120
Catalpa M., Col.	300,000	16,875
Con. Gold M., Ga.	100,000	6,667
Central Arizona, Ariz.	300,000	15,000
Deadwood Terra G. M., Da.	200,000	125,000
Evening Star M., Col.	50,000	6,250
Freeland M., Col.	200,000	120,000
Grand Prize M., Nev.	100,000	2,500
Horn Silver M., Utah	400,000	700,000
Iron Silver M., Col.	500,000	312,500
Jocuistita M., Mex.	100,000	75,000
Little Chief M., Col.	200,000	30,000
Leadville Con. M., Col.	400,000	30,000
Little Pittsburgh M., Col.	200,000	30,000
LaCrosse M., Col.	200,000	8,600
Morning Star Con., Col.	100,000	12,500
Manhattan M., Nev.	50,000	25,000
Old Dominion C. M., Ariz.	300,000	100,000
Plymouth Con. M., Cal.	100,000	150,000
Plutus M., Col.	200,000	200,000
Rappahannock G. M., Va.	250,000	32,500
Red Elephant M., Col.	500,000	10,000
Small Hopes M. Co., Col.	250,000	125,000

Mining Companies—Continued.

Name and location.	Number of shares.	Value held in New York.
Silver King M., Ariz.	100,000	350,000
St. Joseph Lead, Mo.	100,000	250,000
Sierra Grande M., N. Mex.	400,000	38,000
Stormont S. M., Utah	200,000	7,500
South Silver King, Ariz.	100,000	7,500
Spring Valley H. M., Cal.	200,000	46,667
Tombstone M. & M., Ariz.	500,000	16,667
United Verde M., Ariz.	300,000	75,000
Velencia Mica, Vt.	1,500	750
Vizina Con. M., Ariz.	200,000	16,667
Total market value of shares held in N. Y.		$1,143,104

85

EXHIBIT B.

Life Insurance Companies.

PERSONAL PROPERTY.

Name.	Mortgages.	Collateral loans.	Stocks, bonds, etc., owned by company.	Loans to policy-holders.
Brooklyn	$498,924	$35,300	$833,297	$152,475
Equitable	15,404,726	5,319,641	14,160,343	
Germania	5,703,372	1,500	1,844,622	120,803
Home	1,170,100	774,385	908,721	689,086
Homeopathic	166,600	24,900	57,950	5,613
Manhattan	2,966,108	3,547,006	933,647	1,221,015
Metropolitan	869,350	120,000	335,808	160,774
Mutual Life	46,978,527	6,893,387	26,159,637	
New York Life	21,116,430	370,000	24,874,173	440,067
Provident	20,500			738
United States	2,416,381	219,461	1,714,649	122,561
Washington	5,490,889		715,000	103,982
Total	$102,891,907	$17,310,580	$72,037,247	$3,017,571
Grand total				$195,257,305

The figures here stated are taken from the report for 1885 of the insurance commissioner for the State of New York.

United States bonds and shares of corporations created by the State of New York are not included in third column.

86 EXHIBIT C.

Trust Companies.

Name.	Capital stock.	M'k't val. per share Jan. 1, '55.	Total market value.	
American Loan & Trust	$500,000	$108	$540,000	
Brooklyn Trust	600,000	195	1,170,000	
Buf. Loan, Trust, & S. D.	137,000	.....	137,000	Comptr'll'r.
Central "	1,000,000	280	2,800,000	
Farmers' Loan & Trust	1,000,000	430	4,300,000	
Knickerbocker "	300,000	100	300,000	
Long I'l'd Loan & Trust	300,000	102	306,000	
Mercantile Trust	2,000,000	116	2,320,000	
Metropolitan "	1,000,000	120	1,200,000	
Mutual "	50,000	0	.....	Comptr'll'r.
N. Y. Guar. & Indem.	100,000	130	130,000	
N. Y. Life & Trust Co.	1,000,000	480	4,800,000	
Real Estate Trust, N. Y.	300,000	.....	150,000	Comptr'll'r.
Rochest. Trust & S. D.	90,000	.....	90,000	"
Title Guar. & Trust Co.	175,000	.....	175,000	"
Trust & Deposit Co., Syr.	100,000	.....	100,000	
Union Trust	1,000,000	340	3,400,000	
U. S. Mortgage Co.	1,000,000	.....	500,000	Comptr'll'r.
U. S. Trust Co.	2,000,000	475	9,500,000	
			$32,018,000	

Endorsed: U. S. circuit court. Filed Oct. 22d, 1886. Timothy Griffith, cl'k.

87 *Decree.*

United States Circuit Court, Southern District of New York.

THE MERCANTILE NATIONAL BANK OF THE CITY OF NEW YORK

vs.

THE MAYOR, ALDERMEN, AND COMMONALTY OF THE CITY OF NEW YORK and GEORGE W. McLEAN, Receiver of Taxes.

This cause came on to be heard at this term, and was argued by counsel, and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed as follows, viz:

That the bill of complaint be dismissed with costs against the complainant.

WM. J. WALLACE.

Endorsed: U. S. circuit court. Filed Oct. 22d, 1886. Timothy Griffith, clerk.

88 U. S. Circuit Court, Southern District of New York.

THE MERCANTILE NATIONAL BANK OF THE CITY OF NEW YORK

vs.

THE MAYOR, ALDERMEN, and COMMONALTY OF THE CITY OF NEW YORK and GEORGE W. McLEAN, Receiver of Taxes.

We hereby consent that the foregoing papers shall constitute the record to be sent by the clerk of the circuit court of the United States for the southern district of New York to the Supreme Court of the United States on the appeal to said Supreme Court in the above-entitled cause.

New York, October 23d, 1886.

BROWN & WELLS,
Solicitors for Complainants.

E. HENRY LACOMBE,
Counsel to the Corporation, Solicitor for Respondents.

89 United States Circuit Court, Southern District of New York.
In Equity.

THE MERCANTILE NATIONAL BANK OF THE CITY OF NEW YORK, Appellant,

vs.

THE MAYOR, ALDERMEN, and COMMONALTY OF THE CITY OF NEW YORK and GEORGE W. McLEAN, Receiver of Taxes, Appellees.

To the judges of the United States circuit court for the southern district of New York:

And now, on this the 22d day of October, 1886, into open court comes the Mercantile National Bank of the City of New York, by its counsel and solicitors, Charles W. Wells and Frederick W. Whitridge, Esqs., and shows to the court that the value of the controversy and of the subject-matter in this suit exceeds the sum of five thousand dollars, exclusive of costs, all of which doth appear of record in the suit by the pleadings therein. And the said complainant does in open court now take an appeal from the final decree rendered and made by this said United States circuit court, and prays that an appeal may be allowed him from the final decree made and rendered in this suit by this court to the Supreme Court of the United States.

Endorsed: U. S. circuit court. Filed Oct. 22, 1886. Timothy Griffith, clerk.

90 United States Circuit Court, Southern District of New York.
In Equity.

THE MERCANTILE NATIONAL BANK OF THE CITY OF NEW YORK
vs.
THE MAYOR, ALDERMEN, and COMMONALTY OF THE CITY OF NEW YORK and GEORGE W. McLEAN, Receiver of Taxes.

CITY OF NEW YORK, *October* —, 1886.

Present: —— ——.

The complainant in this suit in equity having in open court this day taken and prayed an appeal from the final decree heretofore made and rendered in this suit—

Ordered, That said appeal be granted and allowed the Mercantile National Bank of the city of New York to the Supreme Court of the United States from the final decree made in this suit dismissing the bill of complaint, with costs against the complainant.

WM. J. WALLACE.

Notice of appeal is hereby waived.
New York, October 22, 1886.

E. HENRY LACOMBE,
Counsel to the Corporation, Solicitor for Respondents.

(Endorsed:) U. S. circuit court. Filed Oct. 22, 1886. Timothy Griffith, clerk.

91 Know all men by these presents that we, the Mercantile National Bank of the city of New York, and William P. St. John, of the city of New York, and Frederick B. Schenck, of the city of Brooklyn, in the State of New York, are held and firmly bound unto the Mayor, Aldermen, and Commonalty of the City of New York and to George W. McLean, receiver of taxes, in the full sum of one thousand dollars, to be paid to the said Mayor, Aldermen, and Commonalty of the City of New York, and to George W. McLean, receiver of taxes, and their successors in office, or assigns; to which payment, well and truly to be made, we bind ourselves, associates, and successors, and our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 21st day of October, one thousand eight hundred and eighty-six (1886).

Whereas lately at a circuit court of the United States for the southern district of New York, in a suit in equity depending in said court between the Mercantile National Bank of the city of New York and the Mayor, Aldermen, and Commonalty of the City of New York and George W. McLean, receiver of taxes, a final decree was rendered against the said Mercantile National Bank of the city of New York, and the said Mercantile National Bank of the
92 city of New York having taken an appeal to reverse the final decree in the aforesaid suit, which said appeal was allowed, and a citation, directed to the said The Mayor, Aldermen, and Commonalty of the City of New York, and George W. McLean, receiver

of taxes, citing and admonishing each of them to be and appear at a Supreme Court of the United States to be holden at Washington on the third Monday of October, 1886;

Now, the condition of the above obligation is such that if the said The Mercantile National Bank of the city of New York shall prosecute its appeal to effect and answer all costs if the said the Mercantile National Bank of the city of New York fail to make its said appeal good, then the above obligation to be void, else to remain in full force and virtue.

THE MERCANTILE NATIONAL BANK
OF THE CITY OF NEW YORK,
F. B. SCHENCK, *Cash.*
WM. P. ST. JOHN. [L. S.]
F. B. SCHENCK. [L. S.]

Sealed and delivered in presence of us, witnesses as to all the signatures—

JAS. V. LOTT.
CHARLES W. WELLS.

Approved:
WM. J. WALLACE.

93 Endorsed: U. S. circuit court. Filed Oct. 22, 1886. Timothy Griffith, clerk.

94 UNITED STATES OF AMERICA, } ss.
Southern District of New York, }

I, Timothy Griffith, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from one to ninety-three, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of the Mercantile National Bank of the city of New York, complainant and appellant, against The Mayor, Aldermen, and Commonalty of the City of New York and George W. McLean, receiver of taxes, defendants and appellees, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 23d day of October, in the year of our Lord one thousand eight hundred and eighty-six, and of the Independence of the said United States the one hundred and eleventh.

[Seal of U. S. Circuit Court, South. Dist. New York.]

TIMOTHY GRIFFITH, *Clerk.*

Endorsed on cover: S. New York C. C. U. S. No. 1258. The Mercantile National Bank of the city of New York, appellant, vs. The Mayor, Aldermen, & Commonalty of the City of New York and George W. McLean, receiver of taxes. Filed October 25, 1886.

121-138

Exhibit No. 4, for Complainants.

SEPTEMBER 21, 1886.

A. B. C. S. Notary Public

Abstract of reports of the condition of National Banks on May 6, 1885, in the State of New Jersey, (p. 209, *Report for 1885.*)

Number of banks, 70.

Capital stock, $12,103,350.

Number of State Banks, &c., with the average amount of their capital, for the six months ending 30, 1882, (p 166 of *Report for 1885.*)

Number of banks, 10.

Capital stock, $1,219.175.

[Upon the oral argument of the case of the Mercantile National Bank *v.* the Mayor, etc., of New York, Mr. Wells, counsel for the bank, cited the case of The People *ex rel.* Knickerbocker Fire Insurance Company *v.* The Commissioners of Taxes of New York City, very recently decided, but not yet reported, and he understood that he had permission from the Court to print the statement of facts in that case and the opinion of the Court, for the use of the Justices of the Supreme Court of the United States.]

SUPREME COURT.

STATE OF NEW YORK.

THE PEOPLE *ex rel.* THE KNICKERBOCKER FIRE INSURANCE COMPANY

v.

MICHAEL COLEMAN and others, Commissioners of Taxes.

Certiorari to review relator's assessment by the Tax Commissioners for the tax of 1885.

The Knickerbocker Fire Insurance Company had a capital stock paid in of $210,000, and surplus earnings of $97,747. The shares of its stock sold in the market at 90 per cent., equal to $189,000 for the whole.

The assessment made by the Commissioners was upon the capital and surplus, making $307,747, from which they deducted the untaxable 10 per cent. of the capital, United States bonds, and real estate already taxed.

The corporation made, prior to the assessment, a report to the Commissioners of Taxes, upon the usual blank form, supplied by the city, of which the following is a copy:

DEPARTMENT OF TAXES AND ASSESSMENTS.

COMMISSIONERS' OFFICE.

Staats Zeitung Building, Tyron Row.

☞ Please state the full name of the Corporation.

Statement made and delivered to the Commissioners of Taxes and Assessments of the City and County of New York, for and in behalf of the .....

.....

showing its condition for the purpose of assessment on the first day of January, 1884.

Total actual assets.....$.....

Capital stock actually paid in, or secured to be paid in.....$.....

Amount of surplus earnings.....$.....

Rate of dividend for last year, or last annual dividend.....$.....

Is the company assessed by the State under Chapter 361, Laws of 1881?

Liabilities in detail, as follows: .....

.....

Amount paid for real estate.....

Describing particularly by ward numbers:

.....

Amounts invested in the stocks of other Corporations which are taxed upon their capital.....$.....

Amount invested in U. S. securities....$.....

.....

[If the stock of the company is worth *less than par*, state the *actual value*, and give the facts under oath, which will justify such estimate of its value.]

.....

The principal office or the place of transacting the financial business of the said corporation is situated in the..... Ward of the City of New York, at No.....

.....St.

City of New York, ss.:

I.....the.....

of the said corporation, being duly sworn, do hereby certify

and declare that the foregoing statement is in all respects just and true.

Sworn to before me, this.....)
day of.....1884.)

By Chap. 176, Sec. 6, of the Laws of 1851, the Commissioners are empowered to examine, under oath, the person representing the corporation, if they deem it necesary, to obtain any fuller or further particulars as to its property or condition.

The company contended that the assessment should be made upon the market value of the shares at 90 per cent. of $189,000, from which the appropriate deductions, as above, should be made.

The city authorities, on the contrary, contended that the law did not prescribe the value of the shares as the basis of determining the value of the taxable capital stock of the corporation. The points of the city were as follows:

1. "The market value of the shares of stock of a corporation "is not the proper and sole criterion of the value of the corporate "property. The statutes relating to taxation nowhere required "the Commissioners to adopt the market value of the shares as "the evidence of the value of a company's personal property. "On the contrary, the statutes provided for taxation of actual "values, leaving the Commissioners free to exercise their best "judgment. The decisions of the Court do not sustain the "theory of the relator as to the controlling and conclusive nature "of the evidence concerning the market value of the shares."

2. "The capital stock of the personal property of a corpora- "tion is a different legal entity from the shares of stock issued "by the company and held by the individual owner." (See "Van Allen *v.* Assessors, 3 Wallace, 573.)

3. "The difference between the corporate property of the "shares of stock owned by the individual holders is emphasized "in the present case by the nature of the relator's business, viz.: "that of fire insurance. The risk of future loss in that busi- "ness is so serious as to constitute a permanent element reducing "the value of the shares of stock."

S. B. Brownell, for the Relator.

E. Henry Lacombe, Counsel to the Corporation, and George S. Coleman, for the Respondents.

BARRETT, *Justice*.—The single question presented by this writ is whether the market value of relator's shares was controlling upon the Commissioners as to the actual value of its capital stock.

There are *dicta* in the books favorable to the relator's contention, but in my judgment the question is set at rest by the case of The People *v.* Asten, 100 N. Y., 595.

As I understand the opinion of the Court in that case, market value is but one of several elements from which actual value may be ascertained.

The Commissioners in placing an estimate upon capital stock act judicially. They could so act "in accordance with *their own knowledge* and with such information as they were able to obtain as to the real value of the stock, from sales in the market *or otherwise*, and by ascertaining *the value of the property which the stock represented and by determining the dividend earning power of the corporation.*" (Opinion, Miller, *J.*, p. 600.)

This doctrine is conclusive. Indeed, were it otherwise, the amount of the corporate tax might be increased or diminished by speculation, or other extraneous considerations.

In the present instance the Commissioners acted upon such information as they were able to obtain with regard to all the matters referred to Mr. Justice Miller. They certainly ascertained the dividend earning power of the corporation. They inquired, too, into the value of the property which the stock represented. They had correct information also as to the market value of the shares. If, in making up their final judgment, they did not take this market value into account, it was because they placed greater reliance upon the other information which was before them. With all the facts in their possession they decided. Unless, therefore, the market value was conclusive upon them—and we have seen that it was not—there was no error in principle.

Besides, the relator was afforded the fullest opportunity of throwing light upon the question of actual value, and it contented itself with giving the market value.

There must be judgment for the respondents, dismissing the relator's writ with costs.

BARRETT, *Justice*.—The single question presented by this writ is whether the market value of relator's shares was controlling upon the Commissioners as to the actual value of its capital stock.

There are *dicta* in the books favorable to the relator's contention, but in my judgment the question is set at rest by the case of The People *v.* Asten, 100 N. Y., 595.

As I understand the opinion of the Court in that case, market value is but one of several elements from which actual value may be ascertained.

The Commissioners in placing an estimate upon capital stock act judicially. They could so act "in accordance with *their own knowledge* and with such information as they were able to obtain as to the real value of the stock, from sales in the market *or otherwise*, and by ascertaining *the value of the property which the stock represented and by determining the dividend earning power of the corporation.*" (Opinion, Miller, *J.*, p. 600.)

This doctrine is conclusive. Indeed, were it otherwise, the amount of the corporate tax might be increased or diminished by speculation, or other extraneous considerations.

In the present instance the Commissioners acted upon such information as they were able to obtain with regard to all the matters referred to Mr. Justice Miller. They certainly ascertained the dividend earning power of the corporation. They inquired, too, into the value of the property which the stock represented. They had correct information also as to the market value of the shares. If, in making up their final judgment, they did not take this market value into account, it was because they placed greater reliance upon the other information which was before them. With all the facts in their possession they decided. Unless, therefore, the market value was conclusive upon them—and we have seen that it was not—there was no error in principle.

Besides, the relator was afforded the fullest opportunity of throwing light upon the question of actual value, and it contented itself with giving the market value.

There must be judgment for the respondents, dismissing the relator's writ with costs.

121-138

No. 1258. OCTOBER TERM, 1886.

SUPREME COURT OF THE UNITED STATES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

THE MERCANTILE NATIONAL BANK OF THE CITY OF NEW YORK, APPELLANT,

vs.

THE MAYOR, ALDERMEN AND COMMONALTY OF THE CITY OF NEW YORK, AND GEORGE W. McLEAN, RECEIVER OF TAXES.

BRIEF FOR APPELLANT.

CHARLES W. WELLS,
FREDERICK W. WHITRIDGE,
WILLARD BROWN,
Of Counsel.

INDEX.

PAGE

Statement of Case 1
Assignments of Error 8
BRIEF:
Moneyed Capital embraces Shares of Stock 9
Such Shares are of a material amount 21
Tax of Corporation under Act of 1857, not equivalent to taxation of shares 24
Illustration of this difference 34
Exemption of Trust Companies 38
Exemption of Life Insurance Cos. 42
Exemption of Deposits in Savings Banks 43
State Policy insufficient to justify violation of Act of Congress 45
Exemption of N. Y. Bonds 47
Exemption of shares of foreign Corporations owned by residents of New York 48
APPENDIX.
Taxing Sections of Revised Statutes 1
Exempting " " " " 1-2
Reports of Corporations under Revised Statutes 2
Law 1857 taxing Corporations 4
" " Deposits in Savings Banks 4
" 1880 Exempting New York City Bonds 5
" 1859 State Equalization 6
" 1880 Exempting Life Ins. Cos. 7
" 1882 Taxing Shares of Banks 8
" 1875 Regulating Savings Banks 11
" 1881 Corporation Franchise Tax 15
Boyer *v.* Boyer, 113 U. S., Report of Case 21
People *v.* Commrs., 23 N. Y., 193, EXTRACT 32
People *v.* Commrs., 2 Wall., 200 " 37
People *v.* Commrs., 35 N. Y., 432 " 40

Supreme Court of the United States.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

THE MERCANTILE NATIONAL BANK OF THE CITY OF NEW YORK,
Appellant,

vs.

THE MAYOR, ALDERMEN AND COMMONALTY OF THE CITY OF NEW YORK and GEORGE W. McLEAN, Receiver of Taxes.

Statement of the Case.

The appellant filed in the court below a bill in equity (Record, p. 2), praying for an injunction restraining the defendants from collecting certain taxes assessed against appellant's shareholders. An answer, amounting to a general denial (p. 12), and a replication (p. 16) were filed, and upon these, together with a "stipulation as to facts" (p. 17), which covered the important facts of the case, and a number of affidavits reaching collateral questions, the case was submitted to the Court upon the application for a preliminary injunction, it being then understood that such hearing should be the substantial hearing of the case. The Court refused the injunction, and filed thereon the only opinion filed in the case (p. 20). Subsequently the "stipulation as to facts on final hearing" (p. 30) was filed. This "stipulation" differed but slightly from the first one filed, and upon it and the bill and answer the Court entered a decree dismissing the bill (p. 54).

The appellant is a National Bank created under the National Bank

Act (Record, p. 2), and is located in the city of New York. The city of New York, defendant, by its officers, made an assessment in January, 1885, against each individual shareholder of the bank for the gross value of the shares held by him, less only a sum equal to the proportional part of the value of the real estate of the bank and any debts due by such assessed shareholder. Each share of $100 par value was assessed at $89 (p. 3) after making such deduction, but without making any deduction for the United States bonds ($949,000, p. 2) held by the bank.

This assessment was made under Chap. 409, Laws of New York of 1882, Section 312, as follows:

"The stockholders in every bank or banking association organized "under the authority of this State or of the United States, shall be "assessed and taxed on the value of their shares of stock therein; said "shares shall be included in the valuation of the personal property of "such stockholders in the assessment of taxes at the place, city, town "or ward where such bank or banking association is located, and not "elsewhere, whether the said stockholders reside in said place, city, "town or ward or not; but in the assessment of said shares, each "stockholder shall be allowed all the deductions and exceptions al-"lowed by law in assessing the value of other taxable personal prop-"erty owned by individual citizens of this State, and the assessment "and taxation shall not be at a greater rate than is made or "assessed upon other moneyed capital in the hands of indi-"vidual citizens of this State. In making such assessment, there "shall also be deducted from the value of such shares such sum "as is in the same proportion to such value as is the assessed value of "the real estate of the bank or banking association, and in which any "portion of their capital is invested, in which said shares are held, "to the whole amount of the capital stock of said bank or banking "association. * * * The local authorities charged by law with "the assessment of the said shares shall, within ten days after they "have completed such assessment, give written notice to each bank or "banking association of such assessment of the shares of its respective "shareholders, and no personal or other notice to such shareholders of "such assessment shall be necessary for the purpose of this Act."

So far as *mere form* goes, no objection is taken to the assessment.

Nor is the case based in any degree upon the dereliction by the assessing officers of any of their duties—there is no allegation in either *bill or answer*, nor is there any evidence in the case, that the administrative officers have not performed their whole duty under the statutes of the State.

The case involves the RIGHT *of the State of New York to tax at all*, under the existing facts, the shares of National Banks located therein, and arises under Section 5219 of the Revised Statutes of the United States, as follows:

"Nothing herein (the National Bank Act) shall prevent all the "shares in any association from being included in the valuation of "the personal property of the owner or holder of such shares, in "assessing taxes imposed by authority of the State within which such "association is located; but the Legislature of each State may deter- "mine and direct the manner and place of taxing all the shares of "national banking associations located within the State, subject only "to the two restrictions, that *the taxation shall not be at a greater rate* "*than is assessed upon other moneyed capital in the hands of* "*individual citizens of such State*, and that the shares of any national "banking association, owned by non-residents of any State, shall be "taxed in the city or town where the bank is located, and not else- "where. Nothing herein shall be construed to exempt the real "property of associations from either State, county or municipal taxes "to the same extent, according to its value, as other real property is "taxed."

The theory of the appellant is that the State of New York, in seeking to tax national bank shares, has not complied with the *condition* contained in the Act of Congress just quoted, but has, upon the contrary, imposed a greater rate of taxation upon such shares than "upon other moneyed capital in the hands of individual citizens of such State," in that it has by its legislation expressly exempted from all taxation in the hands of the individual citizen, numerous species of moneyed capital, aggregating in *actual* value the sum of $1,686,000,000, whilst it has by its laws subjected national bank shares, in the hands of the individual holders thereof, (aggregating a par value of $83,000,000), and State bank shares (having a like value of $22,815,700) to taxation upon their full actual value, less only a proportionate amount of the real estate owned by the bank. This exemption, being of a "very material part, relatively," of the whole, (under the authority of Boyer *v.* Boyer, 113 U. S., 689), renders the taxation of national bank shares void.

These exemptions are of several classes, as follows:

Class A.—By the Statutes of New York the *shares of stock in the hands of the individual shareholders* of all incorporated "moneyed or stock corporations deriving an income or profit from their capital, or

otherwise," incorporated by the laws of New York, *are exempt* from all taxation. (For the statute in full, see Appendix, page 2.)

It was stipulated (Record, p. 31, pl. 3), that the *actual* (not par), value of the *shares* of such corporations (not including life insurance companies, trust companies, State or national banks) is $755,018,892

And (p. 31, pl. 5) of the *shares of trust companies*... 32,018,900

The contention of the defendants as to this class was:

First.—That the shares of such corporations other than banks, are not "moneyed capital" within the meaning of the Act of Congress.

Second.—That if they are held to be "moneyed capital," they are nevertheless subjected indirectly to taxation by the Act of 1857, which is, they said, "precisely tantamount, so far as the substance of the thing is concerned, with an assessment against each individual shareholder upon the actual value of his shares," and that the *condition* of the Act of Congress is thereby satisfied.

The act of 1857 referred to, is: "The capital stock of every company, *except such part of it . . . . as shall have been exempted by law . . . . after deducting* the assessed value of its real estate and *all shares of stock* in other corporations . . . . taxable upon their capital stock under the laws of this State, shall be assessed . . . and taxed . . . . as other personal and real estate of the county." (See Appendix, p. 4, for act in extenso.)

The complainant's position, in reply, was:

1st. That such shares *are* moneyed capital.

2d. That an "indirect" taxation, claimed by defendants to be "tantamount" to an "assessment against each individual shareholder," is not a compliance with the *condition* imposed by Congress—namely, that the "other moneyed capital" shall be "*assessed* in the *hands* of the *individual* citizen."

3d. That the "*indirect*" taxation under said Act of 1857, is not, *in fact*, "tantamount" to any such thing as defendants' claim. If the taxation of the

capital stock against a corporation may be "tantamount" in any case to the taxation of the shares against the shareholders, *such can only be the case where the* WHOLE *capital stock is so taxable*. As the Act of 1857 "*excepted*" "from the taxable capital stock such part of," "it as shall have been exempted by law," and also "*deducted* shares of stock owned by such" "company," *only a part* of the capital stock is taxable to the corporation, and, therefore, such taxation cannot be said to be an equivalent of the taxation of the whole of the "shares" of such corporation, which is the rule applied by statute to National Bank shares, from the value of which no such "exceptions" or "deductions" are made.

In support of complainant's view, it was shown that the New York corporations taxable under the Act of 1857, having a total capital stock of $790,577,792, *actual* value (Record, p. 31, pl. 3, 4 & 5), were, after excluding the "exceptions" and "deductions" aforesaid, and the assessed value of real estate, subjected to an assessment of only $78,343,777 (Record, p. 32 and 33).

Had real estate only been deducted (as is the case in taxing shares of National Banks), and not the "excepted" investments (consisting chiefly of United States bonds, State and municipal bonds, shares of domestic and foreign corporations—the National Banks holding similar securities), the result would have been as follows:

Total value of shares, as ante	$790,577,792
Deduct real estate (Record, p. 32)	340,000,000
Taxable remainder	$450,577,792

The great difference between the actual result under the Act of 1857 ($78,343,777, as ante), and that obtained by applying the same "substantial" rule to domestic corporations which was applied to National Banks (to wit: $450,577,792, as ante), shows, as was claimed by complainants, that the two systems of taxation *did not* accomplish "precisely tantamount" results, as was contended for by defendants.

The Court below decided these contentions in favor of the defendants.

As to Trust Companies it was conceded by the Court that the shares therein *are* moneyed capital (p. 28, near middle), but it was decided that they were taxed indirectly in taxing the capital stock of the trust companies under the act of 1857, like other companies.

The complainants showed, as to this latter point, that the trust companies of the city of New York, having an aggregate capital stock of an *actual* value of $30,215,900 (p. 32, top) were, after deducting real estate to the amount of $2,336,572 (p. 32, middle) and "shares of New York corporations and other non-taxable securities" (p. 32, middle), assessable upon only the insignificant remainder of ..... $156,506.

Class B.—The State has expressly exempted from all taxation, "*the personal property*" of all life insurance companies incorporated by the laws of that State, "and the shares of stock therein."—(See Appendix, p. 7 for Statute in full).

The stipulation in this case (page 31, pl. 4, and Exhibit B., p. 53) declares that the *actual* value of the said personal property is:

Mortgages	$102,891,907	
Collateral loans	17,310,580	
Stocks and bonds	72,037,247	
Loans to policyholders	3,017,571	
		$195,257,305

(United States bonds and shares of New York corporations are not included herein. Record, p. 53.)

The actual value of the *shares* of such life insurance companies is (p. 31, pl. 4) 3,540,000

The defendants contended and the Court below *held* that these exemptions were in pursuance of a *public policy* of the State, intended "to foster a class of corporations which exercise a salutary influence upon the community." (P. 29, middle.)

The complainants objected that *no* such *State policy* could be set up to defeat the operation of the act of Congress.

Class C.—The Act of 1857 provided that "deposits "in any bank for savings which are due to the de- "positors . . . shall not be liable to taxation." (See Appendix, p. 4 for the Act in full.)

It was stipulated (p. 32, pl. 6) that these deposits amounted to $437,107,501

(This does not include $68,669,001 accumulated surplus.)

"*Public policy*" of the State was again set up (by defendants and the Court below) to defeat the application of the *condition* of the Act of Congress, notwithstanding the evident *extent* of the exemption and the employment of this capital in competition with the National Banks. (P. 30, top.)

Class D.—Certain bonds of the city of New York were exempted. (See Act of 1880 in Appendix, p. 5.)

Actual value of these (p. 32, pl. 7) 13,467,000

Public policy and the small value of the bonds were set up in defense.

Class E.—The statutes of the State, as construed by its courts, do not authorize the taxation, in the hands of the individual holders, residents of said State, of the shares of stocks of corporations created by States other than New York. The *actual* value of these is *not less* than (p. 32, pl. 8) 250,000,000

Total value of exempted "moneyed capital" $1,686,409,598

The total par value of the *shares* of National Banks in the State of New York, is (p. 33) $83,054,160
and of State banks (p. 33) 22,815,700
and the total assessed value of all the taxable personal property in the State was:
In the city (p. 32) $202,673,806
In the State exclusive of the city 151,632,369
$354,306,175

(This sum included the valuation of the shares of National and State Banks, and of that part of the personal property, including capital stock, of domestic corporations which is taxable by the laws of New York. The latter is as follows (p. 32):

In the City—Insurance Co's		$2,146,379
Trust Co's		156,506
Miscellaneous Co's		29,234,409
Railroad Co's		12,339,871
In the State—All Co's		34,466,612
Total		$78,343,777)

ASSIGNMENTS OF ERROR.

1st. The Court below erred in dismissing the bill of the complainant, and in not awarding the injunction as prayed for.

2d. The Court erred in not holding that the shares of complainant are taxed under the laws of the State of New York "at a greater rate than is assessed upon other moneyed capital in the hands of the individual citizens of said State."

3d. The Court erred in holding that the shares of stock in the hands of the individual shareholders of manufacturing, railroad, trading, and other miscellaneous corporations are not moneyed capital in the hands of the individual citizen, and in holding that of shares of corporations, only those of corporations engaged in banking business are moneyed capital within the meaning of the act of Congress.

4th. The Court erred in holding that the condition of the act of Congress can be satisfied by any other taxation than that imposed directly upon the other moneyed capital in the hands of the individual citizen, and in holding that the taxation under the New York Act of 1857 of a portion of the capital stock of corporations of that State is "practically and substantially taxation of the capital of the shareholders" as "effectually and onerously as other kinds of moneyed capital of individual citizens are taxed," including shares of National Banks.

5th. The Court erred in not holding that the exemption of the shares of Trust Companies from taxation was such a violation of the act of Congress as to render the taxation of National Bank shares illegal and void, Trust Companies being engaged in a banking business in competition with the National Banks.

6th. The Court erred in not holding that the exemptions of the personal property and shares of the life insurance companies of the State, the deposits in savings banks, and bonds of the city of New York, were exemptions of sufficient amount and character as to render the taxation of shares of National Banks at a greater rate than other moneyed capital in the hands of the individual citizens of said State.

7th. The Court erred in holding that the public policy of the State to foster State corporations exercising a salutary influence upon the community is a legal ground for allowing shares in national banks, created by authority of the United States, to be taxed at a greater rate than the moneyed capital represented by such corporations.

8th. The Court erred in holding that the exemption by the law of the State, as declared by the Courts, of shares of foreign corporations in the hands of residents of the State, is not in violation of the requirement of the act of Congress.

Brief of Argument.

Class A—Point I.

The words "other moneyed capital in the hands of the individual citizen" are not confined in their meaning to capital employed in the business of banking, but embrace shares of stock of all corporations, whether they are engaged in manufacturing, railroad or banking business, and also embrace bonds, mortgages, credits and moneys at interest.

The Act of Congress (Sec. 5219) authorizes the assessment of the "shares" of a national bank (as distinguished from the capital stock of the bank), under the restriction that "the taxation shall not be at a greater rate than is assessed upon *other moneyed capital* in the hands of individual citizens of such State."

The Act of Congress of 1864 (13 Stat., 111), the first one authorizing the taxation of national bank shares, contained a further restriction, viz.: "That the tax so imposed, under the laws of any State, upon the shares of any of the associations authorized by this act, shall not

exceed the rate imposed upon the shares in any of the banks organized under the authority of the State where such association is located." In the re-enactment of this statute in 1868 (15 Stat., 34), this second proviso was dropped out

It is contended by the appellant that the words "other moneyed capital" embrace all such investments as are *measured* (not valued) *by money*, or defined or represented by money or a money standard. This includes "money at interest," public and corporate bonds, mortgages, deposits in savings banks and shares of stock of all corporations, whether engaged in manufacturing, trading, railroad or banking business. We speak of a farm as of "so many acres," of cloth as of "so many yards," of a railroad bond or share of stock as of "so many dollars"—all quite irrespective of their actual value. Perhaps a better definition of "moneyed capital" is that which directly *produces* money only. The Court below (Judge Wallace) held that these words do not embrace the shares of corporations *other than those engaged in a banking business* (Record, p. 28).

Before considering the principles involved, an examination of the decided cases bearing on this point may be of value:

> *Hepburn* v. *School Directors*, *23 Wallace*, *480*: "It is "contended that the term moneyed capital as here used "signifies money put out at interest. * * * We cannot con- "ceive that money at interest is the only moneyed capital included "in that term as here used by Congress. The words are 'other "moneyed capital.' That certainly makes stock in these banks "moneyed capital, and would seem to indicate that other invest- "ments in stocks and securities might be included in that "descriptive term."

The Court further intimated that mortgages, judgments, recognizances, and moneys owing upon articles of agreement for the sale of real estate are "moneyed capital."

The next case is that of *Adams* v. *Nashville*, *95 U. S.*, *19*. Interest paying bonds issued by the city of Nashville were spoken of as "moneyed capital."

People v. *Weaver*, *100 U. S.*, *539*. This case was as follows:

The law of New York of 1850 provided that in assessing against any individual his personal estate, including shares of corporate stock, the assessors should deduct the just debts of such individual; the statute of 1866 providing for the assessment of bank shares, national and State, failed to provide for the deduction of debts as in the case

of other personal property. The Court of Appeals of that State having ruled that the Act of 1850 did not extend to bank shares, the question was whether the taxation upon the whole value of the relator's (national banks) shares, without deducting his debts, was unauthorized by the Act of Congress, as being a discrimination in favor of "other moneyed capital." The Supreme Court of the United States held that it was, and that the tax could not be imposed upon national bank shares.

It will be observed that the discriminating statute of New York included *State* bank shares, as well as national bank shares. The discrimination was not in favor of State bank shares as against national bank shares, but against the shares of banks both national and State in favor of all other species of moneyed property. If the Supreme Court had thought that State bank shares constituted "the other moneyed capital" they could not have found a discrimination to exist in this case.

The case of *Cummings* v. *The Bank*, *101 U. S.*, *143*, is to the same effect.

The laws of the State of Ohio required all moneyed capital to be assessed at its real value, and were in themselves quite in harmony with the Act of Congress. By a prearrangement among the assessors, the rule of actual valuation was changed so that whilst the shares of banks, State as well as national, were assessed at their true value, all other moneyed capital was assessed at six tenths of its value only. The Supreme Court held that to the extent of the discrimination the assessment was illegal.

> *Evansville Bank* v. *Britton*, *105 U. S.*, *322*: "Credits, money "loaned at interest, and demands against persons or corporations "are more purely representative of moneyed capital than personal "property" (tangible personalty) "so far as they can be said "to differ. Undoubtedly there may be much personal property "exempt from taxation without giving bank shares a right to "similar exemption, because personal property is not necessarily "moneyed capital. But the rights, credits, demands, and money "at interest mentioned in the Indiana Statute, from which *bona* "*fide* debts may be deducted, all mean moneyed capital invested "in that way."

The case directly in point is

Boyer v. *Boyer*, *113 U. S.*, *689*.

In this case the exempted property claimed to be "moneyed capital" consisted *chiefly* of the shares of railroad, mining, manufacturing, and other miscellaneous corporations. Bonds of railroads and other corporations, mortgages, judgments, and recognizances were also exempt. Shares of State banks and savings institutions were, by the statutes of that State, made taxable like the shares of national banks—no discrimination existed there between national bank stock and capital invested in other banking business.

The Supreme Court of Pennsylvania (103 Penn., 387) ruled the case upon the ground that "other moneyed capital" meant capital "invested in like business," that is to say, "the shares of State banks and savings institutions."

The Supreme Court of the United States reversed this judgment, and said of this reasoning as follows:

> "The Supreme Court of Pennsylvania, after referring to "*Hepburn* v. *The School Directors*, cited above, as having in-"volved the same question that is now presented, and observing "that the exemption is here, as there, only partial says: 'Not only "is some other moneyed capital of a miscellaneous character taxable "for local purposes, but all such capital of the same character as "that which you desire to exempt; that is to say, the shares of "State banks and savings institutions.' Again: 'The General "Assembly has authorized the taxation of the shares of these banks "in no other manner and at no higher rate than other capital of "a similar character.' If by this language it is meant that an "illegal discrimination against capital invested in national bank "shares cannot exist where no higher rate or heavier burden of "taxation is imposed upon them than upon capital invested in "State bank shares, or in State savings institutions, we have to "say that such is not a proper construction of the Act of Congress. "Capital invested in national bank shares was intended to be "placed upon the same footing of substantial equality in respect "of taxation by State authority, as the State establishes for other "moneyed capital in the hands of individual citizens, however "invested, whether in State bank shares or otherwise."

After stating the statutes of Pennsylvania, which were claimed to create the exemptions of moneyed capital, the Court (Mr. Justice Harlan) said:

> "Unless we greatly misapprehend the effect of this "legislation, a very large amount of property made subject by "the Act of 1844 to taxation for both State and county purposes

"has since been relieved from the burdens of county taxation;
"while the imposition by the Act of 1870 upon national bank
"shares of local taxation at the same rate as was at the latter
"date, or has been since, imposed upon other moneyed capital in
"the hands of individual citizens of the State, leaves such shares
"subject to taxation as provided in the Act of 1844. The bur-
"den of county taxation, imposed by the latter act, has at all
"events been removed from all bonds or certificates of loan issued
"by any railroad company incorporated by the State; *from*
"*shares of stock in the hands of stockholders of any institution*
"*or company* of the State which, in its corporate capacity, is lia-
"ble to pay a tax into the State treasury under the Act of 1859;
"from mortgages, judgments, and recognizances of every kind;
"from moneys due or owing upon articles of agreement for the
"sale of real estate; from all loans however made by corporations
"which are taxable for State purposes when such corporations
"pay into the State treasury the required tax on such indebted-
"ness."

After stating the averments of the bill, he further proceeds as follows:

"Upon such facts and in view of the revenue laws of the
"State, it seems difficult to avoid the conclusion that, in respect
"of county taxation of national bank shares, there has been, and
"is, such a discrimination in favor of other moneyed capital
"against capital invested in such shares, as is not consistent with
"the legislation of Congress. The exemptions in favor of other
"moneyed capital appear to be of such a substantial character in
"amount as to take the present case out of the operation of
"the rule that it is not absolute equality that is contemplated by
"the Act of Congress; a rule which rests upon the ground that
"exact uniformity or equality of taxation cannot in the nature of
"things be expected or attained under any system. But as sub-
"stantial equality is attainable, and is required by the supreme
"law of the land, in respect of State taxation of national bank
"shares, when the inequality is so palpable as to show that the
"discrimination against capital invested in such shares is serious,
"the courts have no discretion but to interfere."

There are no other cases

in the Supreme Court of the United States bearing upon this subject, and it will be observed that even preceding the Boyer case all of those clearly held to the doctrine that the words "other moneyed

capital" embraced more than banking capital. The only cases to be found sustaining the theory that banking capital only was meant by the Act of Congress are in State Courts or the Circuit Courts, and are the following cases, or based upon them :

First National Bank of Utica *v.* Waters, 7 Fed. Rep., 156 (Wallace, *J.*, Circuit Court, N. Y.).

Stratton *v.* Collins, 43 New Jersey Law, 569.

McMahon *v.* Palmer, 102 N. Y., 176—6 N. E. Rep., 400 (Court of Appeals, N. Y. April, 1886.).

In the case first cited Judge Wallace said that

> " The term moneyed capital in the hands of individual citizens " more aptly describes ready money or capital invested in private " banking than it does capital invested in manufacturing corpora- " tions, insurance companies and the like."

No authority is cited for the view expressed, and no reference is made to the then recent case of People *v.* Weaver, 100 U. S., 539—ante., which is directly opposed in *principle* to this theory.

The case in 43d New Jersey is directly based upon the opinion of Judge Wallace in the Utica Bank case, and was decided upon its authority and without any other.

In the case of McMahon *v.* Palmer, 102 N. Y., 176, Ruger, *C. J.*, said :

> " We are of the opinion that investments in the shares of the " companies named do not come within the meaning of that clause " in the federal statute referring to other moneyed capital in the " hands of individuals. That phrase, as generally employed, dis- " tinguishes such capital from other personal property, and invest- " ments in the various manufacturing industrial enterprises of " citizens, and this is the sense in which it is used in our tax laws, " as appears by reference to the statutes ; such is also believed to " be the meaning attached to such words as are generally used in " the federal statute. The obvious intent of the federal statute " was to prevent discrimination against investments in national " bank shares, and to put them upon terms of equality as to taxa- " tion with similar institutions and investments in the several " States, and the language of the statute seems to have been " selected with reference to that object. The rule of comparison " is not with the rate of taxation imposed upon personal property " generally, or with specific investments in mining, manufactur- " ing, or the various other industrial corporations organized " throughout the State, but with other moneyed capital in the " hands of individual citizens."

No reference is made to the then recent case of Boyer *v.* Boyer, in this Court, which is apparently directly to the contrary, and it is fair to assume that the attention of the Court of Appeals was not *drawn* to it.

The error of the Court below upon this point doubtless occurred by reason of a manifest misunderstanding of the decision of this Court in Boyer *v.* Boyer, arising upon a misapprehension of the facts of that case by the learned Judge (Wallace). He says:

> "The capital which was exempted from local taxation under "the laws of Pennsylvania, and which the Court held in Boyer "*v.* Boyer, to be a material portion of the moneyed capital of "individual taxpayers was *almost wholly of* this kind, being mort- "gages, judgments, bonds, certificates of indebtedness and "moneys owing upon articles of agreement.
>
> "It is true that shares of stock of all corporations of the State "liable to pay a State tax were also exempt in that case; but no "*emphasis* was placed, in the opinion of the Court, upon the "exemption of this kind of capital, and, of course, *this exemption* "*included shares of stock in moneyed corporations* as well as in "other corporations." (Record, p. 28., middle.)

Three clear errors occur in this statement:

1. The material portion of exempted moneyed capital in Pennsylvania was *not* "almost wholly" mortgages, judgments and bonds and the like. On page 700 of the Report, in 113 U. S., it is set forth that the mortgages, moneys owing by solvent debtors, whether by promissory note, bill, bond, etc., amounted to no more than $74,931,765, and that corporation bonds did not exceed $51,404,162; whilst the shares of stock exempted are shown, on the same page, to have been $564,000,000. Certainly $126,000,000 cannot be said to be "almost the whole" as against $564,000,000. *The fact* therefore appears *indisputably to be precisely the reverse of Judge Wallace's statement.*

2. He says "*no emphasis* was placed," in the opinion of this Court, upon the exemption of this kind of capital," *i. e.*, shares of stock of miscellaneous corporations. We have already shown (*ante*, page 12) that the Supreme Court of Pennsylvania ruled the case on the ground that "other moneyed capital" meant banking capital, and that this Court expressly repudiated that doctrine—see page 701 of 113 U. S. Shares of stock in miscellaneous corporations are included by this Court in its enumeration of exempted moneyed capital together with corporate bonds, mortgages and judgments, and in that immediate connection the Court states the aggregate value of the exemptions of

each class in the figures quoted above. The enormous proportionate weight of figures in the immediate connection with which they are used is such as to preclude the just statement that *no emphasis* was placed upon such exemption.

3. Judge Wallace says, "of course this exemption" (*i. e.*, of the shares of stock of corporations of the State) "included shares of stock in moneyed corporations as well as in other corporations."

The opposite is the real fact. The exempting Act of 1868 (page 698 of the Report) exempted the shares of such corporations only as, in their corporate capacity, are liable to and pay into the State Treasury a tax upon capital stock, amounting to the sum above stated of $564,000,000. But "foreign insurance companies, *banks and savings institutions*" were expressly *excepted* from the requirement to pay in this corporate capacity such tax on capital stock into the State Treasury (page 698, middle). Besides this, shares of stock in State banks were *expressly* made taxable for local purposes to the same extent as shares in National banks were taxable (p. 696, middle).

The unquestionable fact is, that in the Boyer case but two questions were put before this Court:

> *First.*—Whether the exemption of shares in railroad, gas, manufacturing and other corporations, was the exemption of other "moneyed capital" within the meaning of the Act of Congress, the Pennsylvania Court having ruled the case upon the ground that it was not.
>
> *Second.*—Whether (distinguishing from the *Hepburn* case, 23 Wall, 480) it is a sufficient compliance with the Act of Congress that *some* (any part) of this "other moneyed capital" has been made taxable by State authority, if a "very material part relatively" of such "other moneyed capital" has been exempted from taxation by State law.

This Court met the first question by an affirmative reply, and the second by a negative.

The New York Judges naturally fell into the error of supposing that "moneyed capital," as used in the Act of Congress, is that capital which is employed in banking enterprises, because of the peculiar provision in the Revised Statutes of that State (Part 1, Title II., Ch 18, Sec. 51) defining "moneyed corporation." It declares: "The term 'monied corporation,' as used in this title, shall be construed to mean every corporation having banking powers, or having the power to make loans upon pledges or deposits, or authorized by law to make insurances."

But the words "moneyed corporation" are not confined to such meaning in other States. In Massachusetts they comprehend railroad telegraph and manufacturing companies as well as banks and insurance companies. Under those words the shares of such companies have been taxed for more than fifty years. "Personal estate shall include * * stocks in turnpikes, bridges and moneyed corporations within or without the State." Pub. Stat., C. 11, Sec. 4; Rev. Stat., C. 7, Sec. 7 (1836). The latter refer, in the margin, to the annual Tax Act of 1830, which includes "insurance stock, or shares or property in any incorporated company for a bridge or turnpike road, or shares in any other incorporated company." The report of the commissioners who prepared the Revised Statutes shows the intent to include in the general words of the revision all that had been particularly described in the preceding annual tax acts.

In the States generally, corporations having banking powers are described as "banks," "banking corporations," and not as "moneyed corporations."

Upon the principles involved, if *banking* capital is *not the sole* "other moneyed capital" as the decisions of this Court, already quoted, positively declare, where shall the line be drawn? This Court has also held, *ante*, that bonds, mortgages, credits, moneys at interest *are* such moneyed capital. Why are not *shares* of miscellaneous corporations equally within the description, especially as *shares* of national bank stock are declared in the same sentence of the Banking Act to be "moneyed capital" (Hepburn *v.* School Directors, 23 Wall., 480, *ante*). And if the shares of State banks and trust companies *are* "moneyed capital in the hands of the individual citizens," as the Court below concedes (p. 28) why are not shares of other corporations? There seems to be no difference *in nature* between the shares of a bank and the shares of a railroad. The owner of the one has precisely the same interest in nature and extent that the other has. The only difference lies in the fact that the money of the one stockholder has been invested by the corporation in the purchase of commercial paper whilst that of the other has been expended in building a railroad. To exclude the one class of shares and include the other is to say that it is capital invested in banking which Congress intended to describe, and this is directly contrary to the repeated decisions of this Court, as already shown.

The argument of the learned judge of the Court below upon this point is as follows (p. 28):

> "It is hardly proper to call shares in manufacturing or trading "corporations 'moneyed capital in the hands of individual citi- "zens,' and if Congress had intended to include all capital thus

"invested it would have been easy to do so under some such com-
"prehensive term as personal property. It is not obvious how
"the equitable interest of the shareholders in such corporations,
"which entitles him to share in the profits or upon dissolution in
"the division of the assets, should be deemed moneyed capital
"any more than the capital invested in any other kind of personal
"property which can be converted into money by sale is to be
"deemed moneyed capital. Shares of stock in moneyed corpora-
"tions, such, for instance, as trust companies, capital invested
"in the business of private banking, is doubtless properly de-
"scribed as moneyed capital. So also the capital represented by
"all obligations which are solvable in money, such as notes,
"bonds, certificates of indebtedness and other securities for the
"payment of money would seem to be within the description.
"* * * The term 'moneyed capital' has a much more limited
"meaning than the term personal property, and it must be as-
"sumed that it was employed deliberately in the Act of Congress
"to denote more restricted forms of invested capital. In one
"sense the capital invested by the merchant or the manufacturer
"in his business is moneyed capital, but it is no more so than
"that which the professional man has invested in his library, or
"the mechanic in the implements of his trade. If such invest-
"ments are to be deemed moneyed capital, then the term has
"substantially as wide significance as the term personal estate.
"If the capital of the merchant or the manufacturer is not
"moneyed capital, it would seem to follow that the interests repre-
"sented by the shares of manufacturing or trading corporations are
"not properly described as moneyed capital. The Supreme Court
"say (in Evansville Bank *v.* Britton, 105 U. S., 324): 'The Act
"of Congress does not make a tax on personal property the meas-
"ure of the tax on the bank shares of the State, but the tax on
"moneyed capital in the hands of individual citizens. Credits,
"moneys loaned at interest, demands against persons or corpora-
"tions, are more purely representative of moneyed capital than
"personal property so far as they can be said to differ. Un-
"doubtedly, there may be much personal property exempt from
"taxation without giving banking shares a right to similar ex-
"emption, because personal property is not necessarily moneyed
"capital.'"

The argument of the learned Judge comes to this:

The capital invested by an individual merchant in his stock of goods is not moneyed capital—it is personal property.

The interests represented by the shares of a trading corporation are the equivalent of the investment by an individual merchant in his stock.

Therefore, shares of a trading corporation are not moneyed capital, but are personal property.

This reasoning is necessarily based on the truth of the statement that the interests represented by shares in a corporation owning a stock of goods are the equivalent of an interest in a stock of goods owned by an individual, *i. e.*, the goods themselves.

Again the learned Judge says:

"Shares of stock in moneyed corporations, such for instance as trust companies, capital invested in the business of private banking, is doubtless properly described as moneyed capital" (p. 28).

"The equitable interest of a shareholder in a trading corporation is not moneyed capital but personal property."

That is to say:

A share in a trust company differs from a share in a trading company; and therefore one is moneyed capital and the other is not, but is personal property.

But there is no difference in the nature of the shares themselves—the only difference lies in the nature of the *property* which the *corporation owns*—in the one case moneyed property and in the other tangible personal property.

Hence, to constitute such a difference between the shares as is said to exist, it must be that a share in a trust company is an ownership in property (*i. e.*, moneyed capital), of the trust company, and a share in a trading corporation is an ownership in the property (*i. e.*, personal property), of the trading company.

But this Court has repeatedly decided that a *shareholder is not* an owner of the goods of the corporation and has no estate whatever in them.

Van Allen *v.* Assessors, 3 Wall., 573.
Farrington *v.* Tennessee, 95 U. S., 679.
Sturges *v.* Carter, 114 U. S., 521.
New Orleans *v.* Houston, 119 U. S., 265.

Hence, it follows either that the logic of the learned Judge below is bad, and his conclusions erroneous, or that the decisions of this Court in the cases last cited are mistaken, and must now be overruled.

"Moneyed capital" is doubtless "moneyed property," and is not

necessarily the money which an individual had and has invested. When we speak of the capital which a merchant has, we do not mean the money originally invested in his trade, for that may have been sunk in losses or doubled by profits. We do mean, however, that property which he now possesses, beyond his indebtedness, and which may be subjected to future liabilities.

So we do not mean the individual's original money invested in bank stock or in railroad bonds or otherwise, when we speak of his moneyed capital. We mean the bonds, the shares, the credits themselves. In other words we mean that *into which* the capitalist has invested his money, being that which he now owns. The inquiry arises, therefore, into what has the purchaser of shares of a corporation invested his money—what has now become of his capital? Obviously enough, the shares themselves and not the railroad. The corporation has put *its* money into the railroad, and the railroad has become its capital—but the shareholder bought shares and they are his capital. They are his "moneyed" capital if shares are ever moneyed capital. That they are in the case of banks, National or State, is conceded and has been decided.

Therefore, all shares are "moneyed capital in the hands of the individual citizen," unless we entirely obliterate the distinction between the corporate ownership and that of the individual shareholder, and hold a corporation to be a mere aggregation of individuals with partnership interests in the property owned in common in the name of the corporation. This theory has been so often denounced by this Court that it is unnecessary even to cite the authorities.

> *The intent of Congress* in constituting this restriction upon the powers of the States to tax shares of national banks was based upon the *necessity of protection*, but not protection solely against encroachments by State banking capital. *The protection was made to extend as widely as the danger.* It is just as much within the power of the States to injure and finally destroy the national bank by discrimination against investment in their shares in favor of investments in shares of railroad and trading corporations as in favor of investments in banking business. Capital will seek investment in such property as is least burdened and most productive, and if the State may burden at its will the shares of national banks, relieving from like burden the shares in railroad companies, it is manifest that capital seeking investment will take the latter rather than the former, and thereby the requisite national banking capital will not be taken by the investor, and this necessary instrument of the National Government will be destroyed. Should

a State say to its citizens, "If you invest a hundred dollars in national bank stock, you shall pay as a penalty therefor the sum of five dollars into the treasury of the State, but if you will invest it in a share of a railroad company designed to develop the interests of this State, you shall not be required to pay such penalty," there can be no question that such discrimination would be quite as effectual in driving capital out of national banking shares as if the discrimination had been made in favor of the development of a State banking enterprise.

For these reasons, this Court said in the case of Boyer *v.* Boyer, 113 U. S., that capital invested in national bank shares was intended to be placed upon the same footing of substantial equality in respect of taxation by State authority, as the State establishes for other moneyed capital *however invested*, whether in State bank shares or otherwise.

Class A—Point II.

Shares of stock of railroad and miscellaneous corporations being "other moneyed capital in the hands of the individual citizen," within the meaning of the Act of Congress, the State of New York has exempted such shares from all taxation. This constitutes an exemption of "a very material part relatively of other moneyed capital" and renders void the taxation of national bank shares.

The Revised Statutes of New York, in Chapter XIII., Title 1, Section 7, provide as follows:

> "Sec. 7. The owner or holder of stock in any incorporated "company liable to taxation on capital, shall not be taxed as an "individual for such stock."

Title IV., Section 1, of the same chapter, informs us what corporations are liable to taxation on their capital.

> "Section 1. All moneyed or stock corporations deriving an in- "come or profit from their capital, or otherwise, shall be liable to "taxation on their capital in the manner hereinafter prescribed."

The "manner" therein prescribed was to assess such company with the amount of its "capital stock, paid in and secured to be paid in, and of all surplus funds, after deducting the sums paid out for all the real estate of such company * * and the amount of stock, if any, belonging to the people of this State, and to incorporate literary and charitable institutions."

This method was altered by Chapter 456 of the Laws of 1857, as follows:

> "Sec. 3. The capital stock of every company liable to taxation, "except such part of it as shall have been excepted in the assess- "ment roll, or as shall have been exempted by law, together with "its surplus profits or reserved funds exceeding ten per cent. of "its capital, after deducting the assessed value of its real estate, "and all shares of stock in other corporations actually owned by "such company, which are taxable upon their capital stock under "the laws of this State, shall be assessed at its actual value and "taxed in the same manner as the other personal and real estate "of the country."

It is perfectly clear that *shares of stock in the hands of the individual holders thereof* are not taxable under the laws of the State of New York, excepting the shares of banks, State and national, under the Act of 1882, *ante*, p. 2.

The character and effect of the taxation of corporations under the Act of 1857 (just cited) will be seen hereafter.

The materiality of this exemption thus appears:

The Stipulation (Record, p. 31, pl. 3) shows:

"The aggregate value of the shares of stock of the incorporated moneyed and stock corporations incorporated by the Laws of the State of New York deriving an income or profit from their capital or otherwise (not including life insurance companies, trust companies, banks or banking associations, organized under the authority of this State or of the United States), amount to the sum of	$755,018,892
And of the Life Insurance Companies (p. 31, pl. 4)	3,540,000
And of the Trust Companies (p. 31, pl. 5)	32,018,900
Total shares	$790,577,792

The total par value of the *shares* of National Banks in the State of New York, is (p. 33) $83,054,160
and of State banks (p. 33) 22,815,700
and the total assessed value of all the taxable personal property in the State was:
In the city (p. 32) $202,673,806
In the State exclusive of the city 151,632,369
$354,306,175

This sum included the valuation of the shares of National and State Banks, and of that part of the personal property, including capital stock, of domestic corporations which is taxable by the laws of New York. The *latter* is as follows (p. 32):

In the City—Insurance Co's	.....	$2,146,379
Trust Co's	.....	156,506
Miscellaneous Co's	.....	29,234,409
Railroad Co's	.....	12,339,871
In the State—All Co's	.....	34,466,612
Total	.....	$78,343,677

The learned Judge of the Court below concedes the *materiality* of this exemption, if it is an exemption.

He says (p. 26):

> "It is obvious that if shares of stock in miscellaneous corporations, other than those which are commonly called moneyed "corporations, fall within the designation of 'moneyed capital,' "the very large amount of this kind of capital which, under the "system of this State is exempt from taxation 'in the hands of "'individual citizens,' forms a material portion of the aggregate "capital."

Such shares being, therefore,

1. Moneyed capital,
2. Exempt from taxation, and
3. A material portion relatively of the whole,

it follows that, under the rule established by this Court in Boyer *v.* Boyer, 113 U. S., the State has not complied with the requirement of the Act of Congress, and the attempted taxation of the shares of national banks is void.

Class A—Point III.

The shares of stock of railroad and miscellaneous corporations having been exempted from taxation in the hands of holders thereof, the taxation of the property of the corporation under the Law of 1857 is not a taxation of the "moneyed capital in the hands of the individual citizen" owning such shares, and is not a compliance with the requirements of the Act of Congress.

The Court below, conceding that the shares of such corporations were not taxable in the hands of the owners thereof, decided that the moneyed capital of the shareholder is in fact taxed, under the Act of 1857, as effectually as though the shares were themselves assessed. The learned Judge said:

> "There is no reason to suppose that Congress cared at all "about the *mode* the States might adopt for the collection of "their taxes. A tax imposed on the capital or property of a "corporation falls as effectually on the capital of the share-"holder represented by his shares as does a tax upon the shares "directly, and although in legal contemplation a tax upon the "former is not a tax upon the latter, practically and substantially "taxation of the capital of the corporation is taxation of the "capital of the shareholder" (Record, p. 27).

> "This kind of capital should not be deemed exempt from "taxation under the system of this State, because, as has been "already stated, it is taxed as effectually and as onerously as "other kinds of moneyed capital of individual citizens; and "although such tax is not assessed against the shares directly it "falls ultimately and inevitably upon the capital of the indi-"vidual invested in it. The beneficiaries of a trust estate are the "persons upon whom the taxes of the estate really falls, although "the assessment is not made against them, but against the "trustee, who has the legal title of the personal property" (Record, p. 29).

The Act of 1857 (Chap. 456) is as follows:

> "Sec. 3. The capital stock of every company liable to taxation, "except such part of it as shall have been excepted in the assess-"ment roll, or as shall have been exempted by law, together with

"its surplus profits or reserved funds exceeding ten per cent. of "its capital, after deducting the assessed value of its real estate, "and all shares of stock in other corporations actually owned "by such company, which are taxable upon their capital stock "under the laws of this State, shall be assessed at its actual value "and taxed in the same manner as the other personal and real "estate of the county."

We reply:

1. Under the Act of 1857, it is not the capital "in the *hands* of the individual" holder which is taxed, nor is such capital *assessed* at all. The Act of Congress requires both.

2. The capital stock of a corporation, and the shares of that corporation, are two separate species of property in separate ownerships, and both are taxable or neither, in the discretion of the Legislature. Hence, taxation of one is not the taxation of the other, and the taxation of both is not double taxation. Hence, also, the difference between taxation of shares, and the taxation of capital stock, is *not one* of *form* merely, but is one of substance.

3. The Act of Congress does not contemplate a substitute for its express requirement, and this Court has repeatedly refused to accept a taxation on the capital of a corporation, as a substitute for the taxation of the shares.

4. The burden imposed upon the capital stock of the corporation under the Act of 1857, *is not in fact* equivalent to a tax imposed upon the shares.

5. The Act of 1857 does not impose a burden equivalent in substance (much less in form) to that imposed by the Act of 1882 upon the shares of national banks.

Under these heads, we say:

1. It is the *property* of the corporation which is assessed, and that property is assessed in *its* hands—assessed *to* it, and as property belonging to it. The assessed value of the property of the corporation has no relation whatever to the value of the shares. A corporation may have a capital of $100,000 and real estate worth a million paid for with bonds. The assessment may be for $1,000,000, but no one would say that that is the assessed value of the shares. Or the reverse may happen. The company, having nine-tenths of its million of capital invested in non-taxable securities, may be assessed for only $100,000. Yet the shares are worth, and, if separately assessed, would be assessed at, a full million.

2. The *capital stock* of a corporation is an entirely different piece of property from the *shares* of the corporation. The capital stock of a corporation consists of its *property;* that of a railroad company consists of its railway, its locomotives, cars, machinery and depots and, incidentally, of investments in stocks and bonds. It may and does often consist of property of an intangible nature possessing great value—such as the right of way, a business "good will," etc.

But the *shares* of that corporation are not property of such character—they are not interests in the railroad or locomotives nor even in the business "good will"—they are intangible interests in the *profits* of the *business* of the company and, upon the termination of such business, in the *proceeds* of the property after payment of debts. Whilst a shareholder is interested in the property of a company, it is not that he is an *owner* thereof, but because the profits of the company, in which he is an owner, are greater or less by reason of the value of the property of the company. In other words, his legal interest is in the product of the machine and not in the machine itself.

In fact, a general creditor of a corporation has a far greater interest in the corpus of the estate of the corporation than the shareholder, and it would be much nearer the truth to say that the taxation of the property of the corporation is equivalent to the taxation of its bondholder for his bond.

The capital stock and the shares are held by distinctly different persons; one the corporation (an artificial person it is true, but none the less a separate entity), the other the shareholder in his natural person.

But it may be argued that the creation of a corporation and the issuance of shares does not make the shareholders richer. They may say that if three men, owning a rolling mill, choose to create a corporation, to which they convey the mill and receive the shares of the corporation in payment, these three men are no richer than they were—that there is no more property in the State than there was before, and, hence, that the property and the shares *must* be the same thing.

This is a mistake. True, there is no more *wealth* in the State, but there is just twice as much *property*. It is very similar to the case of a conveyance by one natural person to another of a house, taking a mortgage in part payment therefor. Now, the purchaser owns the house and the grantor the mortgage, and yet there is no more *wealth* than before. Yet the law and the community declare that each man to this transaction has in ownership *property*.

It is *property* which the fundamental law of New York looks to for taxation—not *wealth*. The law taxes the land to the owner though it be mortgaged beyond its value—and the existing law of New York also taxes the mortgage.

Farrington v. *Tennessee*, *95 U. S.*, *686*.

"The capital stock and the shares of capital stock are distinct "things. The capital stock is the money paid or authorized or re- "quired to be paid in as the basis of the business of the bank and the "means of conducting its operations. It represents whatever it may "be invested in. The capital stock and the shares may both be taxed "and *it is not double taxation*."

New Orleans v. *Houston*, *119 U. S.*, *277*.

"It is well settled by the decisions of this Court that the property of shareholders in their shares, and the property of the corporation in its capital stock, are distinct property interests, and that both may be taxed."

Sturges v. *Carter*, *114 U. S.*, *521*.

"It may be conceded that generally the capital or the capital stock of a corporation is its property. But the shares held by the shareholders are distinct from the capital stock of the corporation, and the taxation of both is not necessarily double taxation."

Van Allen v. *Assessors*, *3 Wallace*, *573*.

"The corporation is the legal owner of all the property of the bank, real or personal."

"The interest of the shareholder entitles him to participate in "the net profits earned by the bank in the employment of its "capital, during the existence of its charter, in proportion to the "number of his shares; and, upon its dissolution or termination, "to his proportion of the property that may remain of the cor- "poration after the payments of its debts. This is a distinct, inde- "pendent interest or property, held by the shareholder like any "other property that may belong to him."

Albany City Nat. Bank v. Maher, *6 Fed. Rep. 418*.

WALLACE, *J.*—[A Law of 1880, creating a franchise tax on corporations, exempted the "capital stock and personal property" of these corporations from further taxation. It was argued that this operated to remove the tax on national bank shares.]

"This Act exempts only the capital stock and personal property "of such corporations and joint stock companies from assessment "or taxation.

"There is a wide difference for the purposes of taxation "between the capital stock and the personal property of a cor- "poration and the shares held by the several stockholders. Capi- "tal stock and shares therein are distinct species of property, as "distinct as real estate and the mortgage by which it may be "encumbered. The corporation and its capital and property are "one thing, the stockholders and their shares quite another.

"The corporation has the legal title and right of disposition of "all the corporate property, subject to the conditions of its "charter. The stockholder's right is to enjoy a proportionate "part of the profits, or upon dissolution of the corporation a pro- "portionate part of the assets, after payment of debts. This is a "distinct, independent interest or property held by the share- "holder, like any property that may belong to him."

"And because property of shareholders in shares, and the prop- "erty of the corporation in its capital, are distinct property in- "terests, both may be taxed. Van Allen *v.* The Assessors, 3 Wall., "573. As both may be taxed, both may be exempted from "taxation by legislative authority, but one is not exempted by the "exemption of the other."

And yet his Honor Judge Wallace *now* holds in the case at bar that "practically and substantially taxation of the capital of the corporation is taxation of the capital of the shareholder"!

The argument on this point is expressed with remarkable vigor by the Supreme Judicial Court of Massachusetts in

Commonwealth v. *Hamilton Co.*, 12 *Allen*, 298.

BIGELOW, *C. J.*:

"The market value of the shares of a corporation, or the aggre- "gate market value of all shares, by which we understand the "cash price for which the shares will sell in the market, does not "necessarily indicate the actual value or amount of property "which a corporation may own. The price for which all the "shares would sell may greatly exceed the aggregate of the cor- "porate property, or it may fall very far short of it. Undoubtedly "the amount of property belonging to a corporation is one of the "considerations which enters into the market value of its shares; "but such market value also embraces other essential elements.

"It is not made up solely by the valuation or estimate which may "be put on the corporate property, but it also includes the profits "and gains which have attended its operations, the prospect of its "future success, the nature and extent of its corporate rights and "privileges, and the skill and ability with which its business is "managed. In other words, it is the *estimate put on the potenti-* "*ality* of a corporation, on its capacity to avail itself profitably "of its franchise, and on the mode in which it uses its privileges "as a corporate body, which materially influences and often con- "trols its market value.

"Familiar examples will illustrate this. Thus, the shares in a "corporation may have a market value and sell for a high price "before any of its capital stock has been paid in, or it has acquired "any corporate property. In such case, it is the estimate put on "its franchise and the expectation of the benefits and advantages "to be derived from it which give it a value. So there may be "two corporations organized with similar powers, having the "same number of shares, the same amount of property or capital, "and both may be engaged in the same branch of business. The "market value of the shares in one corporation may be double "that of the other, because one is prosperous and likely to make "large gains, while the other is unsuccessful, and is carrying on a "business which may prove unprofitable or lead to heavy losses."

Same principle.

Stratton *v.* Collins, 14 Vr., 562.
People *v.* Barton, 29 How. Pr., 371.
Porter *v.* R. R. Co., 76 Ill., 563.

3. Congress did not authorize a substitute as an equivalent for its express requirements, and this Court has hitherto refused to accept a taxation of the capital in substitution for the taxation of the shares.

The proposal of a substitute for the condition fixed by Congress seems to carry its own refutation. Congress fixed one condition—who shall fix another? Congress says: "You shall only tax bank shares as you assess, among other things, shares of State corporations." It is proposed by the defendants here to tax bank shares as they tax the *property* of the *corporations*. If "shares" and "corporate property" (capital) are totally different things, as has been shown, then the proposal is to substitute the taxation of one thing for the taxation of the other thing which Congress has specified.

The identical proposal was made to this Court before in

Van Allen v. *Assessors*, *3 Wall.*, *573.*

This case arose under the National Bank Act as it then stood, including the *second* limitation that "the rate of taxation upon the shares of national banks shall not exceed that imposed upon the *shares* of State banks."

Under the identical sections of the Revised Statutes of New York here relied upon, the *shares of State banks* were exempted from taxation, and under a law (C. 240, Laws 1863), identical in substance with that of 1857, here also relied upon, the *capital stock* of State banks were taxable to the corporations. It was claimed by the assessors in that case, precisely as it is claimed by the defendants in this case, that this latter tax on the capital stock of the State bank was substantially equivalent to a tax upon the shares of the bank, casting the same burden upon the shareholder, and that therefore the requirement of the Act of Congress had been met.

The Court said:

> "The decree of the Court of Appeals must be reversed, on "the ground that the Enabling Act of the State, passed March "9, 1865 (Sess. 1, Ch. 97), does not conform to the limitations "by the act of Congress, passed June 3, 1864, Ch. 106 (13 Stat., "99), organizing the national banks, and providing for their "taxation (Sess. 41). The defect is this: One of the limitations "in the act of Congress is, 'that the tax so imposed under the "'laws of any State upon the shares of the associations author-"'ized by this act, shall not exceed the rate imposed upon the "'shares of any of the banks organized under the authority of "'the State where such association is located.' The Enabling "Act of the State contains no such limitation. The banks of "the State are taxed upon their capital; and although the act "provides that the tax on the shares of the national banks shall "not exceed the par value, yet, inasmuch as the capital of the "State banks may consist of the bonds of the United States, "which are exempt from State taxation, it is easy to see *that this "tax on the capital is not an equivalent for a tax on the shares "of the stockholders.*
>
> "This is an unimportant question, however, as the defect may "readily be remedied by the State Legislature.
>
> "*The tax on the shares is not a tax on the capital of the bank.*"
>
> "The corporation is the legal owner of all the property of the "bank, real and personal; and within the powers conferred upon

"it by the charter, and for the purposes for which it was created, "can deal with the corporate property as absolutely as a private "individual can deal with his own. This is familiar law, and will "be found in every work that may be opened on the subject of "corporations. A striking exemplification may be seen in the "case of the Queen *v.* Arnoud, 9 Ad. & Ell., N. S., 806. The "question related to the registry of a ship owned by a corporation. "Lord Denman observed: 'It appears to me that the British cor-"'poration is, as such, the sole owner of the ship. The individual "'members of the corporation are no doubt interested in one "'sense in the property of the corporation, as they may derive in-"'dividual benefits from its increase, or loss from its decrease; "'but in no legal sense are the individual members the owners.'

"The interest of the shareholder entitles him to participate in "the net profits earned by the bank in the employment of its cap-"ital, during the existence of its charter, in proportion to the "number of his shares; and, upon its dissolution or termination, "to his proportion of the property that may remain of the cor-"poration after the payment of its debts. This is a distinct, in-"dependent interest or property, held by the shareholder like "any other property that may belong to him."

It is difficult to see how two cases more precisely alike than the Van Allen case and the present one could be found. *There* it was claimed that the taxation of the capital stock of a State bank was the equivalent of the required taxation of the shares therein; *here* it is claimed by defendant that the taxation of the capital stock of railroad, telegraph and other companies is the equivalent of the required taxation of the shares therein, *i. e.*, moneyed capital. In the principles involved there is not a line of difference between the two cases.

Observe the *basis* of the Court's judgment, to wit: That the shares of a corporation are an entirely different species of property from the capital stock—the property—of the corporation and owned by entirely different persons.

The same principle was declared in

Bradley v. *Illinois*, 4 *Wallace*, 459.

In Illinois there was no taxation of the *shares* of State banks, but there was one upon the entire capital stock of such banks. The Auditor of State contended that "the entire property, which includes "all the shares, is taxed as a whole, and this is, so far as the rate is "concerned, equivalent to taxing the shares."

The precise question here under discussion was raised and decided by this Court in

People *v.* Commissioners, 4 Wallace, 244.

Under the law of the State of New York in taxing insurance and other corporations upon their capital stock deductions were allowed by law to be made for investment in United States bonds. No such deductions were permitted in the taxation of the shares of national banks. It was objected by shareholders of the National Bank of Commerce that such taxation of the capital stock of State corporations was a discrimination against the shares of the national bank in violation of that condition of the act of Congress which requires that the taxation of the latter shall not be "at a greater rate than that assessed upon other moneyed capital in the hands of the individual citizen."

This Court denied the proposition, upon the ground that, under the act of Congress, the comparison is not to be made with the taxation of corporations upon their capital stock, that not being moneyed capital in the hands of individual citizens, but that it must be made with the property of the shareholders in their own hands, that is to say, the shares themselves.

Mr. Justice Nelson said:

"The Commissioners, in their return, state that insurance companies created under the laws of the State, and doing business "in the city of New York, were respectively assessed upon the "balance of their capital and surplus profits, liable to taxation, "after deducting deducting therefrom such part as is invested in "United States securities.

"Another objection taken is, that the taxation of the shares "of the relator is illegal, on account of this deduction—it being a "departure from the rate of assessment prescribed in the clause "already cited.

"The answer is, that this clause does not refer to the rate of "assessments upon insurance companies as a test by which to pre-"vent discrimination against the shares; that is, confined to the "rate of assessments upon moneyed capital in the hands of indi-"vidual citizens. These institutions are not within the words or "the contemplation of Congress; but even if they were, the an-"swer we have already given to the deduction of these securities "in the assessment of the property of individual citizens is equally "applicable to them. These companies are taxed on their capi-"tal, and not on the shareholder, at the same rate as other per-"sonal property in the State."

Justice Nelson also said:

"The general question was distinctly presented in the bank "cases of the last term, of which Van Allen *v.* Assessors was one "of the class, and disposed of. It was there said: 'But in addi- "tion to this view, the tax on the shares is not a tax on the capital "of the bank. The corporation is the legal owner of all the "property of the bank, real and personal; and within the powers "conferred upon it by the charter, and for the purposes for which "it was created, can deal with the corporate property as absolutely "as a private individual can deal with his own. * * * The "interest of the shareholder entitles him to participate in the net "profits earned by the bank, in the employment of its capital, "during the existence of its charter, in proportion to the number "of its shares; and upon its dissolution or termination, to his pro- "portion of the property that may remain, of the corporation, "after the payment of its debts. This is a distinct, independent "interest or property, held by the shareholder like any other "property that may belong to him;' and, we add, of course it is "subject to like taxation."

4. The tax imposed on the capital stock of the corporation by the Act of 1857 *is not in fact* equivalent in burden to a tax imposed upon the shares.

The argument of the defendants and the Court below, that a taxation of the value of all the shares is substantially reached by a taxation of the capital stock of the corporation, can only be plausible in the case of the taxation of the *entire* capital stock, the theory being that a taxation of the property of the corporation is substantially, if not technically, the taxation of the representatives of that property.

Upon their own theory, therefore, a taxation of a *portion* only of that property must remove a portion of the "substantial burden" from the shareholder; so that a law which permits a taxation upon only a *portion of the capital stock* of the corporation is, confessedly, not the same thing in substance as a taxation of the whole value of all the shares.

The Act of 1857 does not *require* the taxation of the *whole* of the capital stock of the corporations subject to it—it *permits* a taxation upon a *portion only*—(a large or a small portion practically at the option of the corporation). It directs the assessment of the *remainder only* of the capital stock, after deducting the value of the real estate, shares of domestic corporations, non-taxable securities and invest- ments outside of the State. Such an assessment is not the same, even

substantially, as the assessment of all the shares; for from the value of the latter no such deductions could be made, unless expressly authorized, which has not been done in New York.

But, it may be replied, that it is just to make these deductions, otherwise there would be double taxation or taxation of property not intended to be taxed. This may be true in part, but the justice of it is no more apparent in the case of the capital stock than in that of the shares. If they are substantially the same thing, as the defendants declare, then if justice demands the deduction of the excepted property in the one case, it equally does in the other.

Instead therefore, of the taxation of capital stock under the law of 1857 being substantially the same thing as taxing the whole of the shares, as claimed by the city of New York, the one differs from the other in at least that ratio which the excepted investments bear to the whole value of the shares.

The actual result of this difference

between taxation of all the shares and the taxation of that remainder of capital stock permitted by the law of 1857 is clearly shown on the record.

The aggregate value of the shares of stock of the corporations of New York other than life insurance and trust companies is (p. 31)		$755,018,892
Of life insurance companies (p 31)		3,540,000
Of trust companies (p. 31)		32,018,900
Total value of all shares		$790,577,792
But the actual assessment of capital stock of the corporations under the Law of 1857 was (it is admitted, p. 32), "after making deductions for investments in real "estate, shares of New York corporations * * * "and non-taxable securities,"		
In the City.		
Insurance Co's	$2,146,379	
Trust Co's	156,506	
Miscellaneous Co's	29,234,409	
Railroad Co's	12,339,871	
	$43,877,165	
Out of the City	34,466,612	
		78,343,777
Difference		$712,234,015

Thus it is quite apparent that the taxation under the Act of 1857 so far from being "substantial taxation of the shares," amounts, in fact, to the taxation of a sum equal to only 12 per cent. of the shares.

It may be suggested that this difference is not the result of the statute but of the oversight of the assessing officers, and of this point the Court below threw out a hint.

To this we reply that there is no averment in bill or answer, or proof on either side, of any dereliction on the part of the assessing officers, and such short coming is not to be assumed otherwise. But, further, however it may be with private individuals, it is practically impossible for corporations in New York to escape taxation on their capital stock. The statutes require under severe penalties all companies to report in detail annually to the proper assessor, and duplicates are to be furnished by them to the State Comptroller (see appendix, p. 3). That the latter has been done is quite apparent from the stipulation. From the values as thus shown, the assessors make the assessment, after first making the deductions required by the Act of 1857.

From that which precedes will flow our next reply to the argument, heretofore stated, of the Court below:

5. The Act of 1857 does not impose upon New York corporations a burden equivalent in substance (much less in law) to that imposed by the Act of 1882 upon the shares of national banks.

As has just been seen the Act of 1857 permits the deduction from the entire capital stock of domestic corporations, of all real estate, shares in domestic corporations, nontaxable securities and property without the State.

But the only deduction permitted in the assessment of shares of national banks is of a proportionate part of the assessed value of the real estate. No deduction is to be made for nontaxable securities, or property outside the State owned by the bank. So that should there be a trading company having a capital of $1,000,000 next door to our national bank with the same capital, each having investments in shares of New York or foreign corporations, United States bonds or property outside the State amounting to $500,000, instead of each bearing a substantially similar burden the former would pay a tax on the remainder only, after making the deductions, whilst the holders of bank shares would pay on an aggregate value of $1,000,000; the latter thus bearing twice as heavy a burden as the former.

Or, in the aggregate, had the rule which is applied to shares of national banks been applied to State corporations the general result would have been as follows:

Total value of shares of all N. Y. corporations (as *ante*)	$790,577,792
Instead of deducting all nontaxable securities, deduct only real estate (p. 32)	340,000,000
The assessment would have been	$490,577,792
But it was only (*ante* p. 34)	78,343,777
A difference of	$412,234,015

In other words had the capital of $790,577,792 been invested in national bank shares, it would have been taxed, under the existing system of New York, upon a remainder (deducting real estate otherwise taxed) of $490,577,792, but, as it is invested in the stock of domestic corporations, the latter only pay on $78,343,777—or six to one against the national bank shares.

It has been suggested by the Court below that State corporations pay, under the law of 1881, a State tax direct to the Comptroller which the national banks do not pay. That law imposed a small specific tax on the *franchise* of State corporations, *but expressly relieved them from the payment of a State tax on capital stock collected through the local assessment.* (See the Statute, Appendix, p. 15) That is to say: *theretofore*, such corporations had paid on the local assessment a State tax, together with the local tax; *thereafter*,—they were not to pay such State tax, but were to pay *instead* a State tax on franchise.

> "From a general comparison of its (this Law) provisions with "the tax laws in force at the time of its enactment and the statis- "tics relating to taxation, we find that in any event it provides "for a large reduction in the rate of taxation collectible from "some, if not all, of the companies named therein. If it be "held to exempt them from liability to pay State taxes alone, "the reduction from the existing rates would in many instances "be considerable."
>
> People *ex rel.* W. F. Ins. Co. *v.* Davenport, 91 N. Y., 587.

It is important

to observe that we do not claim that the Act of Congress is violated because railroad, manufacturing, and other companies are able to deduct from the valuation of capital stock, the government bonds or other non-taxable securities which they possess, whilst the shareholders of national banks are not entitled to make such deductions.

The Supreme Court held in the case in 4 Wallace, 244 (People *v.* Commissioners), that such was not a violation of the Act of Congress,

for the reason that the comparison was not to be made with corporations nor with capital stock as a whole in the hands of corporations—that the one was not an "individual citizen" nor was the other "moneyed capital," and that shares and capital stock are entirely different things in different hands. The technical legal discrimination, of which we complain, lies in the fact that the shares of a railroad company, for example, which are moneyed capital, are not taxable, whilst the shares of banks are taxable. Reference to the fact that non-taxable securities may be deducted in the one case and not in the other has so frequently been made with a view solely of showing to the Court that the argument of the Court below upon which its decree was founded, was erroneous and that the discrimination complained of was not technical only, but was substantial as well. The discrimination consists in the adoption of different systems of taxation, the one for the national bank shares the other for corporations generally. Those systems have the necessary consequence of working out an actual discrimination against the national bank shares. It is not the *result* upon which we stand, but the *cause* from which that result necessarily flows. Nor is it a sufficient answer to us to say that inasmuch as the national bank was given, by the Act of Congress creating it, a "new use" for its government bonds, we should submit to taxation upon the full value of our shares without deducting them, while State corporations are permitted to make such deductions from their capital. It is true that the "new use" was given by the federal government to federal bonds owned by the bank, but for such "new use" the federal government itself imposed a tax—a tax upon the circulation issued upon such notes. Although Congress doubtless intended that the bank shares should pay the tax imposed by the State, notwithstanding the investment by the bank in the bonds (of this we do not complain), it imposed as a condition upon the right of the State to tax them, that limitation which we have been considering. If that condition has been violated by the State, as we have tried to show that it has been, it is immaterial whether the bank has, or has not, obtained a new use for its federal bonds by issuing circulating notes upon them. Therefore the argument of "new use" falls entirely out of the case.

Class A—Point IV.

The exemption of shares of Trust Companies from taxation in the hands of the shareholders, of itself constitutes a "material discrimination" against National Bank shares.

The Court below concedes that "shares in Trust Companies are properly described as moneyed capital" (p. 28); but claims that the taxation of these corporations under the Act of 1857 is "substantially" the taxation of the shares as if separately assessed.

Chapter 596 of the laws of 1880, which is entitled "An Act to provide for the taxation of banks on moneyed capital engaged in the business of banking, receiving deposits or otherwise," provided in Section 3 as follows:

> "The stockholders in every bank, banking association or "*Trust Company* organized under the authority of this State or "of the United States, shall be assessed and taxed on the value "of their shares of stock therein; said shares shall be included in "the valuation of the personal property of such stockholders in "the assessment or taxation at the place, city, town or ward, "where said bank, banking association or *Trust Company* is lo-"cated, and not elsewhere," etc.

Throughout the remaining sections of the statute, which relates to the method of procedure, wherever banks, or banking associations are referred to, *Trust Company* is also included.

On July 1, 1882, by Chapter 409, an act was passed entitled "An Act to revise the statutes of this State relating to banks, banking and trust companies," which repealed the foregoing statute. [Appendix p. 8.]

In Chapter 12 of said last mentioned law, entitled "taxes," Section 312 is an exact copy of Section 3 of the Laws of 1880, just quoted, excepting that wherever the words *Trust Company* appeared in the earlier they have been omitted in the later statute. The same omission occurs in the succeeding sections which are substantially copies of Sections 4 and 5 of the Law of 1880.

Sec. 324, however, subjects trust companies to the State tax on *franchise* under the Act of 1881, imposed in *lieu* of the State tax collected locally (see, ante, p. 36).

For local purposes trust companies remain taxable only upon their capital stock, under the provisions of the Act of 1857, *ante*. Such corporations and the shares therein are, therefore, in precisely the same

situation with that of corporations in general (other than banks). The stipulation shows (p. 31, pl. 5) that the "aggregate actual value of the *shares* of the capital stock of *trust companies* existing in the State of New York and organized under its laws amounts to $32,018,900." The detailed statement on page 54 of the record shows that the par value of the capital stock of such corporations was $12,652,000.

Remembering that the assessed value of the entire capital stock of all the national banks in the city of New York was $45,046,074 only, it would seem that the exemption of $30,215,900 worth (Record, p. 32, top), of shares of trust companies in that city, is a "very material discrimination."

It is, however, the contention of these complainants that the discrimination under the laws of the State of New York, in favor of the shares of stock of trust companies, as against the shares of national banks, is a very material one and violates the Act of Congress in another sense than that arising from the mere weight of dollars' worth of property excluded from the taxable class in which the shares of national banks have already been included.

The Supreme Court has said in the Boyer case that a "very material discrimination" against national bank stock by the laws of a State would be a violation of the condition imposed by Congress upon the right to tax national bank stock. Necessarily, the Court did not define what would constitute a *very material* discrimination. In that case, the very material discrimination found was in the volume of moneyed property, other than national bank shares, exempted from taxation, relative to the volume of such property that was taxable under the law. We have, in following that case, heretofore sought to show that the volume of moneyed property other than national bank shares exempted by the laws of New York from taxation, was likewise such a material discrimination as rendered void that statute of New York which sought to tax such shares.

But we now further contend that the special discrimination in relation to the shares of trust companies is such a peculiar one as of itself to render the discrimination a very material one, without regard to the exemption of the hundreds of millions of dollars' worth of property, other than such shares, to which we have hitherto referred.

The purpose of Congress in imposing the condition which it did in the national banking law was to protect its creatures, the national banks, from such discrimination as would affect their efficiency as an organ of the National Government. Hence, *any* discrimination which *does* affect the efficiency of a national bank is such a discrimination as was prohibited.

The first Act of Congress included a condition specially directed

against State banks of issue, and was intended to protect the national banks from discrimination with relation to the franchise possessed by them of issuing bills to circulate as money. (Lionberger *v.* Rouse, 9 Wall., 468.) When, by the operation of the national bank law, such State banks ceased to exist, and there was no longer the possibility of such discrimination, Congress removed that express limitation. But the law creating the national banks expressly granted, among other banking powers, that of receiving deposits and of making discounts of commercial paper with such deposits. That is to say, the national banks, besides being "banks of issue," are also "banks of discount and deposit." If any faculty is of greater importance than another to the efficient and profitable operation of the banking system, it is that faculty of discount and deposit. It must, therefore, be assumed that Congress, in legislating for the protection of the national banks, had in contemplation quite as much the protection of the faculty of discount and deposit as it had the faculty of issuing bills.

The National Bank Act most carefully prescribes restraints, restrictions and method as to this faculty. It is because of these prescribed restrictions, restraints and method as to deposits in the national banks that these banks are pre-eminently efficient as creatures of the National Government, and deservedly popular among the citizens who are their depositors throughout the several States.

Hence if the State of New York by any species of legislation pertaining to its own creatures which possess the franchise of discount and deposit, as in the case of the trust companies, does relieve them or the shares therein from the public burden of taxation which it specifically imposes upon the shares of national banks located and operating in the same community, side by side, that legislation is *in itself* a discrimination against the national bank and is in violation of the act of Congress aforesaid, irrespective of what the State may have done, with relation to the remainder of other moneyed capital within the State. In the case of trust companies this relief from taxation is afforded by the State at the same time that the burden is continued upon the shares of national banks.

The earning power of these trust companies as compared with that of the national banks is therefore nurtured by the State to the disadvantage of the national banks. As competitors in the conduct of this business of discount and deposit the State has to this degree diminished the efficiency of the creature of the National Government. These trust companies invite and receive deposits subject to check, they make investments in commercial paper, they make loans of money on pledge of security.

The State of New York has accomplished this discrimination under

the Statute of 1882, just quoted, by relieving from taxation the shares of the capital stock of trust companies whilst it has continued the tax on the shares of national banks. That a distinct *intent* existed to thus discriminate is indicated by the fact that theretofore all shares of *both* (national banks and trust companies), were taxable under the same section of the law, and that by the same section in the Act of 1882 the tax on the one was continued whilst from the other it was removed.

No substitute was created for the tax thus removed, but the *corporation* itself was thereby thrown back under the law of 1857. The situation thus purposely created by the State of New York is this: "If the citizen invests his money in the shares of national bank stock we will tax him on their full value, less only a proportionate amount of the real estate of the bank—we will not permit a deduction for United States bonds, for State corporate shares, or property outside our jurisdiction. If, however, he will invest that money, instead, in the shares of trust companies *we will not tax* HIM *at all*, and we will only tax the trust company for that portion of its capital stock *not* invested in real estate, United States bonds or other non-taxable property."

The *effect* of such a discrimination is evident.

Trust companies in the city of New York having shares of a total actual value of	$30,215,900
And real estate of (p. 32)	2,336,572
And a net value of	$27,879,328
Were themselves taxed on an assessment of capital stock, "after making deductions for shares in N. Y. corporations and nontaxable securities," of only	156,506
Or a difference of	$27,722,822
That is to say, had the same system of taxation been applied to trust companies as was applied to national banks, the assessment on the former would have been	$27,879,328
But under the system specially provided for them it was only	156,506
Or, to reverse the picture, had the same principle been applied to the Mercantile National Bank as was applied to the trust companies, the total net assessment which was (p. 3)	$809,000
would have been cancelled by the investment in U. S. bonds of (p. 2)	949,000

Class B.

The exemption of the shares of stock of life insurance companies and their investments in bonds, mortgages and the like, is a "substantial discrimination" against national bank shares.

Chapter 534 of the Laws of 1880, entitled "An Act to provide for the taxation of life insurance companies," provided:

SECTION 4. The lands and real estate of life insurance companies shall continue to be assessed and taxed where situated for State, city, town, county, village, school or other local purposes, but the *personal property* of such companies and *shares of stock* therein *shall* hereafter *be exempt* from assessment or taxation, except as in this Act prescribed.

The tax prescribed by the Act was "a tax upon its corporate franchise or business in this State of a sum equal to one per cent. upon the gross amount of premium, interest or other income exclusive of rents, received by such company * * from persons residing in this State, or investments represented by or based upon property situated within this State."

The value of the shares thus exempted is (p. 31, pl. 4)	$3,540,000
Of Mortgages (*ibid*, and p. 53)	102,891,907
Of Collateral loans (*ibid*)	17,310,580
Of Stocks and bonds (not including U. S. bonds or N. Y. corporate stocks)	72,037,247
Of Loans to policyholders	3,017,571
Total exempted	$198,797,305

The only reason offered by the Court below why this enormous exemption should not be regarded as a violation of the Act of Congress was that "a salutary State policy" had prompted the exemption. This reason will be considered later in this brief.

The tax imposed by the Act of 1880 cannot be regarded in any sense as a substitute for the taxation of the enormous amount of "moneyed capital" therein relieved from all taxation. The new tax is for *State* purposes only, is a *franchise* tax only, and is only measured by the business in the State. The *result* is that now there is no taxation for *local* purposes and only a limited one for State purposes, imposed as a franchise tax.

Class C.

The exemption of the deposits in savings banks is a "material discrimination" against shares of national banks.

Section 4 of Chapter 456 of the Laws of 1857 is as follows:

"Section 4. Deposits in any bank for savings which are due "to the depositors, and the accumulations in any life insurance "company organized under the laws of this State, so far as the "said accumulations are held for the exclusive benefit of the "assured, shall not be liable to taxation, other than the real estate "and stocks which may be owned by such bank or company and "which are now liable to taxation under the laws of this State."

This Section clearly exempts "deposits in savings banks" from taxation. A question has been whether the purpose of the statute was to exempt the depositors or the banks. It is the "deposits which are due to depositors" that have been exempted, but the deposits which are so due depositors do not belong to the bank and could not be taxed to them. Prior to 1857 such deposits were taxable in the hands of the depositors, but never were taxable against the bank.

People *ex rel.* Ithaca Savings Bank *v.* Beers, 67 How., Pr. Reps., 223.

So that, if said statute is to be so construed as to have any effect whatever, it must be held that it is the depositors that were intended to be relieved by the Act of 1857.

The Attorney-General of New York filed in the Banking Department, June, 1878, an opinion as follows:

"In my opinion Section 4, Chapter 456 of the Laws of 1857, "exempted such deposits absolutely from taxation, and the depositor cannot therefore be assessed for such moneys. The law "above mentioned in my opinion protects the individual depositor "as well as the bank."

See Paine's Banking Laws of N. Y., 265, note.

In a case before Mr. Justice Barnard at Poughkeepsie in September, 1879, he said:

"The deposits in savings banks are not taxable. * * * "Ordinarily the depositors would have been taxed, but the "Legislature by Chapter 456, Laws of 1857, ordered that "these deposits should not be taxed."

See page 265 of Paine's Banking Laws of N. Y.

Are these deposits moneyed capital?

Savings Banks are corporations (see Chap. 371, Laws 1875, Sec. 1); trustees are not elected by the depositors, but are self elected (Sec. 16); dividends or interest are to be paid to the depositors by the corporation (Sec. 22). These deposits are mere credits due by a debtor, the corporation. The depositors are not beneficiaries of the trust.

People *v.* Mechanics' Savings Institution, 92 N. Y., 7.

ANDREWS, *Justice*, said:

> "The primary relation of a depositor in a Savings Bank to a "corporation is that of creditor and not that of a beneficiary of a "trust. The deposit when made becomes the property of the cor- "poration. The depositor is a creditor for the amount of the "deposit, which the corporation becomes liable to pay according "to the terms of the contract under which it is made. When "payment is made the claim of the depositor is extinguished and "he has no further claim upon the funds or assets of the bank. "Upon insolvency the assets and property of the corporation, as "in the case of other corporations, is a trust fund for the pay- "ment of creditors, and depositors, we think, stand as other credi- "tors, having no greater, but equal rights to be paid ratably out "of the insolvent estate."

It seems, therefore, that these deposits stand legally in the precise situation in relation to taxation as other money credits—there is no difference at law or in fact between the debt due by the corporation and the depositor and that due by an ordinary debtor to his creditor, the latter debt being represented by a bond, promissory note or mortgage. These are after all nothing but credits, and as such are moneyed capital equal with national bank shares or mortgages.

The stipulation (p. 32) shows the deposits to amount to $437,107,501, not including the accumulated surplus of $68,669,001.

Having in mind the purpose of Congress in creating the limitation on the power of the States to tax national bank shares, to maintain the entire independence of the national banking system, and to prevent any discrimination against it in favor of State enterprises, it is hardly possible to conceive that Congress intended to exclude from the scope of its limitation the enormous sums of money deposited in the savings banks of the country and in use by them for investment in moneyed securities under the laws of the different States.

The report of the Comptroller of the Currency of December, 1886 shows that the total deposits in savings banks were $1,141,000,000, a sum equal to the highest amount ever reached by the "individual

deposits" in the national banks of the country, and a sum more than twice as great as the combined capital stock of all the national banks in the United States at any period.

In contemplating the savings banks' deposits, Congress, of course, viewed them as they existed under the different laws of the several States. In Massachusetts such deposits may be invested to a certain degree in loans on "personal security," as they may likewise be in Pennsylvania, Rhode Island, Connecticut and California, the total of such loans in the United States being $127,000,000. Without evidence to the contrary, and there is none, it is difficult to conceive that Congress did not intend to include the moneyed capital thus accumulated and thus invested, within the words "the other moneyed capital in the hands of the individual citizens of the States," which it made the criterion for the taxation of national bank shares. As such deposits are clearly within the meaning of the words "other moneyed capital," had Congress intended that they should not be included, words of exclusion would have doubtless been used. The great danger to the national banks, by making such exclusion, furnishes a conclusive reason against the assumed intent of Congress to exclude them.

The learned judge of the Court below excluded savings banks' deposits from the scope of the phrase "other moneyed capital" because their exemption is

> "founded upon considerations of State policy and intended to "promote peculiar interests for the benefit of the public" (p. 24, top).
>
> "These deposits represent mainly the savings of people of "small means. It is not probable that a twentieth part of the "whole would be actually reached for taxation if they were not "exempt. Such accumulations tend to the extinction of pauper-"ism, to the encouragement of economy and to the general thrift "and comfort of the mass of the people. It is as much the part "of a wise policy on the part of the State to encourage them as "it is to encourage benevolent and charitable institutions. In "the large, such an exemption reduces the burden of taxation on "other moneyed capital," (page 30.)

This leads us to our point:

No State policy will excuse the taxation of "other moneyed capital in the hands of the individual citizen," if it be of a material amount, without relieving also the shares of national banks.

Because it may be a "wise policy" of the State to encourage its creatures it cannot do so at the expense of the creatures and instruments of the National Government, when Congress has interposed its interdiction as it has in the present case. The State might, with equal wisdom, adopt the "policy" of exempting State banks or State railroads (as it has in part) and cast the entire burden of taxation intended to be equally distributed over all moneyed capital, upon the shares of national banks. If a "policy" of encouragement of thrift will suffice in one case to enable the State Legislature to avoid the limitation of the Act of Congress, why will not the "policy" of development of manufactures, of commerce, by exemption of the capital invested therein, work a like result? Congress never intended that the limitation upon the power of the States thus created, should be subject to either the discretion, the whim or the wisdom of the legislatures of the States. A plain and simple "condition" was submitted to them as that upon which they might tax the shares of national banks, but no reason, no policy, alleged or real, no interest, great or small, which might be suggested by the States, was intended by Congress to enable them to set aside that condition. Congress would not have done so futile a thing as to declare its will and policy and then to permit them to be avoided by the mere existence of an adverse policy in the States. This identical question arose in the Boyer case, and Judge Harlan said:

"Our attention is called by counsel for the defendants to the fact "that Pennsylvania derives probably, her principal revenues from "railroads, and therefore has good reason to look to her interests, as "a Commonwealth, in respect of such improvements. To this fact "he refers the legislation which makes railroad securities liable to "taxation for State purposes only, and exempts them from local taxa- "tion. Upon like grounds he defends the exemptions made, in "respect of local taxation, in favor of the bonds and shares of other "corporations that pay an annual tax into the State Treasury. It is "quite sufficient, in respect of such matters, to say that this Court "has no function to deal with the considerations of public policy "which control that Commonwealth in the assessment of property "for the purposes of revenue. We have no duty beyond that of "ascertaining the intention of Congress in its legislation permitting "the several States to tax the shares of institutions organized under "national authority for the purpose of providing a national currency "secured by United States bonds. If the principle of substantial "equality of taxation under State authority, as between capital so in- "vested and other moneyed capital in the hands of individual citizens, "however invested, operates to disturb the peculiar policy of some of "the States in respect of revenue derived from taxation, the remedy

"therefor is with another department of the Government, and does "not belong to this Court."

As a matter of fact, the deposits in savings banks are not made by people of small means to a very much greater extent than investments in shares of national banks. The laws of New York authorize deposits by a single person to the extent of $3,000, and the learned Judge below has said (that which is true, though it did not appear in the record before him), that the average of these deposits in New York is $378 each. In view of this "extra record" statement, we will take the liberty of quoting from the report of the Comptroller of the Currency, of December, 1886. On pages XXVI and XXVII he shows that of the 223,583 shareholders in national banks, 117,974, being more than one-half, hold ten shares or less, and 78,781 hold more than ten shares but less than fifty. Thus, of the entire capital of the national banks, 88 per cent. is held in sums of $5000 or less, and 53 per cent. in sums of $1000 or less.

Class D.

The exemption of bonds of the city of New York is to be considered with the other exemptions as constituting a material discrimination against the shares of national banks.

Chapter 552, of the Laws of 1880, entitled "An Act to authorize the issuing of certain bonds and stocks of the city of New York exempt from taxation," provides:

> "SEC. 1. The Commissioners of the 'Sinking Fund of the city "'of New York, for the redemption of the city debt,' when duly "authorized by ordinance of the common council, may, by con- "current resolution, direct that the bonds and stocks of said city, "hereafter issued pursuant to law, shall be exempt from taxation "by said city and by the county of New York, but not from tax- "ation for State purposes, and all bonds and stocks issued pursu- "ant to such authority shall be exempt from taxation accord- "ingly."

The stipulation (p. 32) shows the aggregate value of the bonds so issued amounts to $13,467,000.

Class E.

The statutes of the State, as construed by the Courts, exempt from taxation in the hands of the individual holders thereof, residents of the State, the shares of stock of corporations created by States other than New York. This is a material discrimination against national bank shares.

The People *ex rel.* Trowridge *v.* Commissioners, 4 Hun, 595.

> "Residents of this State owning shares of stock in a corporation created under and by the laws of any foreign State are not "subject to be personally assessed and taxed thereon under the "laws of this State."

Affirmed in the Court of Appeals without opinion.

S. P. People *ex rel.* Pacific Mail Steamship Co. *v.* Comm., 5 Hun, 200.

The stipulation states (p. 32) that the actual value of such securities in the hands of the citizens of New York amount *at least* to the sum of $250,000,000.

The Decree Should be Reversed.

If shares of miscellaneous corporations, in the hands of the owners thereof, are "other moneyed capital in the hands of the individual citizen," then the proof of the exemption from taxation of the value of such shares, amounting to a vast sum ($790,000,000), brings the complainant clearly within the Boyer case, and entitles it to the injunction prayed for. Or, if the Court shall find that the exemption of the shares of trust companies is of a material amount of other moneyed capital (it being conceded that the shares of such corporations are moneyed capital) then the complainant is entitled to a like decree.

These are necessary conclusions, unless this Court shall determine that the taxation of a portion of the capital stock of such corporations under the New York Act of 1857 is in substance a taxation of all the shares of such corporations at their actual value, and by such determination overrule the numerous previous decisions of this Court to the contrary. Should, however, this Court decide these contentions against the complainant, it will be necessary to meet the enormous exemptions of the moneyed capital of life insurance companies, and the deposits made by the individual citizen in the savings banks of the State—which exemptions are in the aggregate nearly ten times as large as the entire national banking capital in the State of New York.

The national banks of New York, who now present this complaint to this Court, are not seeking to evade a just burden of taxation. For twenty years they and their shareholders have suffered under the discriminating statutes of that State and have silently paid a heavy local tax, in addition to such taxes as the federal government saw proper to impose, neither of which has been imposed upon their neighbors.

Now, that by recent legislation such discrimination has been extended by that State in favor of capital invested in trust companies and the national banks have been forced thereby to see their competitors in the money markets of the metropolis fostered to their own serious injury, they have felt it to be their duty, not only in the interest of their shareholders but for the preservation of their own integrity, as creatures and instruments of the federal government, to present to this Court a statement of the facts constituting such discrimination.

To grant the relief prayed for in this bill will not necessarily result in the removal for the future of a just share of the local burdens which Congress contemplated should be borne by the shares of national

banks, and which the owners of such shares will cheerfully bear if uniformly imposed.

It is true, indeed, that such relief if granted will be continuous so long as the State chooses to permit its present discriminating system to exist. But, as this Court said twenty years ago, under like circumstances, and to a similar suggestion, so say we now, "this is unimportant, as the defect may be readily remedied by the State Legislature." That body may, if it chooses, easily remedy the defects now existing in the legislation of the State, so that we shall no longer have cause to complain, and we have reason to believe that it contemplates making such changes at its present session. The change, if made, will be not only in response to the requirements of the act of Congress, but of that of natural justice as well.

CHARLES W. WELLS,
FREDERICK W. WHITRIDGE,
WILLARD BROWN,

Of Counsel.

APPENDIX.

REVISED STATUTES OF N. Y., CHAP. 13, TITLE 1.

SEC. 1. All lands and all personal estate within this State, whether owned by individuals or by corporations, shall be liable to taxation, subject to the exemptions hereinafter specified.

SEC. 3. The terms "personal estate" and "personal property," whenever they occur in this chapter, shall be construed to include all household furniture, moneys, goods, chattels, debts due from solvent debtors, whether on account, contract, note, bond or mortgage; public stocks, and stocks in moneyed corporations. They shall also be construed to include such portion of the capital of incorporated companies, liable to taxation on their capital, as shall not be invested in real estate.

SEC. 4. The following property shall be exempt from taxation:

1. All property, real or personal, exempted from taxation by the Constitution of this State, or under the Constitution of the United States.

2. All lands belonging to this State, or the United States.

3. Every building erected for the use of a college, incorporated academy or other seminary of learning; every building for public worship; every school house, court house and jail; and the several lots whereon such buildings are situated, and the furniture belonging to each of them.

4. Every poorhouse, almshouse, house of industry, and every house belonging to a company incorporated for the reformation of offenders, or to improve the moral condition of seamen, and the real and personal property used for such purposes belonging to or connected with the same.

5. The real and personal property of every public library.

6. All stocks owned by the State, or by literary or charitable institutions.

7. The personal estate of every incorporated company not made liable to taxation on its capital, in the fourth title of this chapter.

8. The personal property of every minister of the gospel, or priest, of any denomination; and the real estate of such minister, or priest, when occupied by him, provided such real and personal estate do not exceed the value of one thousand five hundred dollars; and,

9. All property exempted by law from execution.

SEC. 7. The owner or holder of stock in any incorporated company liable to taxation on its capital shall not be taxed as an individual, for such stock.

TITLE 2, CHAP. 13.

SEC. 17. All real and personal estate liable to taxation shall be estimated and assessed by the assessors at its full and true value, as they would appraise the same in payment of a just debt from a solvent debtor.

TITLE 4, CHAP. 13.

SEC. 1. All moneyed or stock corporations deriving an income or profit from their capital, or otherwise, shall be liable to taxation on their capital in the manner hereinafter prescribed.

SEC. 2. The president, cashier, secretary, treasurer, or other proper officer, of every such incorporated company shall, on or before the first day of July in each year, make and deliver to the assessors, or one of them, of the town or ward in which such company is liable to be taxed, according to the provisions of the sixth section of the second title of this chapter, a written statement specifying:

1. The real estate, if any, owned by such company, the towns or wards in which the same is situated, and the sums actually paid therefor.

2. The capital stock actually paid in, and secured to be paid in, excepting therefrom the sums paid for real estate, and the amount of said capital stock held by the State, and by any incorporated literary or charitable institution; and,

3. The town or ward in which the principal office or place of transacting the financial business of such company is situated; or if there be no such principal office, the town or ward in which its operations are carried on, or in which it is liable to be taxed under the provisions of this chapter.

SEC. 3. The president or other proper officer of every such company shall also deliver to the comptroller, on or before the first day of July in each year, a written statement, containing the same matters required by the foregoing section, to be specified in the statement to be delivered to the assessors. The statements required by this and the preceding section of this title, shall be certified under the oath of the said president, or other proper officer, to be in all respects just and true.

SEC. 6. The assessors shall enter all incorporated companies from which such statements shall have been received by them, and the property of such companies, and the property of all other incorporated companies liable to taxation in their respective towns, in their assessment rolls in the following manner:

1. They shall insert in the first column of their assessment rolls the name of each incorporated company in their respective towns or wards liable to taxation on its capital or otherwise; and under its name they shall specify the amount of its capital stock paid in, and secured to be paid in, the amount paid by such company for real estate then belonging to such company, wherever the same may be situated, the amount of all surplus profits or reserved funds exceeding ten per cent. of their capital, after deducting therefrom the said amount of said real estate, and the amount of its stock, if any, belonging to the State and to incorporated literary and charitable institutions.

2. In the second column they shall enter the quantity of real estate owned by such company, and situated within their town or ward; and in the third column, the actual value thereof, estimated as in other cases.

3. In the fourth column they shall enter the amount of the capital stock of every incorporated company, paid in and secured to be paid in, and of all surplus profits or reserved funds as aforesaid, after deducting the sums paid out for all the real estate of such company, wherever the same may be situated and then belonging to it, and the amount of stock, if any, belonging to the people of this State and to incorporate literary and charitable institutions.

SEC. 16. The board of supervisors having completed the assessment, shall transmit to the comptroller, with the aggregate valuations of the real and personal estate in their county, a statement showing the names of the several incorporated companies liable to taxation in such county; the amount of the capital stock paid in, and secured

to be paid in, by each; the amount of real and personal property of each, as put down by the assessors, or by them; and the amount of taxes assessed on each. In those counties in which there is no such company, the boards of supervisors shall certify such fact to the comptroller, with their returns of the aggregate valuations of real and personal estate.

SEC. 21. The comptroller shall furnish the attorney general with the names of all companies and banks refusing or neglecting to pay the taxes imposed on them, with the amount due from them respectively, and the attorney general shall thereupon file a petition in the Supreme Court against every such company or bank, for the discovery and sequestration of its property.

SEC. 22. The chancellor, on the filing of such bill, or on the coming in of the answer thereto, shall order such part of the property of such company to be sequestered, as he shall deem necessary for the purpose of satisfying the taxes in arrear, with the costs of prosecution; and he may also, at his discretion, enjoin such company and the officers thereof, from any further proceedings under their act of incorporation, and may order and direct such other proceedings as he shall deem necessary, to compel the payment of such tax and cost.

LAWS 1857, CHAP. 456.

AN ACT IN RELATION TO THE ASSESSMENT OF TAXES ON INCORPORATED COMPANIES.

(Sections 1 and 2, respectively, repeal and amend portions of the Revised Statutes.)

CAPITAL STOCK.

SEC. 3. The capital stock of every company liable to taxation, except such part of it as shall have been excepted in the assessment roll, or as shall have been exempted by law, together with its surplus profits or reserved funds, exceeding ten per cent. of its capital, after deducting the assessed value of its real estate, and all shares of stock in other corporations actually owned by such company, which are taxable upon their capital stock under the laws of this State, shall be assessed at its actual value, and taxed in the same manner as the other personal and real estate of the county.

DEPOSITS IN SAVINGS BANKS.

SEC 4. The deposits in any bank for savings which are due to depositors, and the accumulations in any life insurance company organized under the laws of this State, so far as the said accumulations are

held for the exclusive benefit of the assured, shall not be liable to taxation, other than the real estate and stocks which may be owned by such bank or company, and which are now liable to taxation under the laws of the State.

(Section 5 amends a section of the Revised Statutes.)

Sequestration of Property.

Sec. 6. The Supreme Court, on the filing of such petition, or on the coming in of the answer thereto, may order such part of the property of such company or bank to be sequestrated, as shall be deemed necessary for the purpose of satisfying the taxes in arrear, with the costs of prosecution; and the Court may also, at its discretion, enjoin such company or bank, and the officers thereof, from any further proceedings under their charter or act of incorporation, and may order and direct such other proceedings as shall be deemed necessary to compel the payment of such taxes and costs.

Laws 1880, Chap. 552.

An Act to authorize the issue of certain bonds and stocks of the city of New York exempt from taxation.

Sec. 1. The commissioners of the "sinking fund of the city of New York, for the redemption of the city debt," when duly authorized by ordinance of the Common Council may, by concurrent resolution, direct that the bonds and stocks of said city, hereafter issued pursuant to law, shall be exempt from taxation by said city, and by the county of New York, but not from taxation for State purposes; and all bonds and stocks issued pursuant to such authority shall be exempt from taxation accordingly; provided that said bonds and stocks shall not bear interest exceeding the rate of four and one-half per centum per annum.

Sec. 2. The bonds and stocks of the city of New York, issued pursuant to the provisions of this statute, shall express upon their face the fact that they are exempt from taxation by the city and county of New York, but not from State taxation, and shall refer to this act, and to the ordinance of the Common Council, and the resolution of the commissioners of the sinking fund authorizing their issue.

Laws 1859, Chap. 312.

AN ACT TO EQUALIZE THE STATE TAX AMONG THE SEVERAL COUNTIES IN THIS STATE.

SEC. 8. The board of equalization shall meet in the city of Albany, on the first Tuesday in September in each year, for the purpose of examining and revising the valuations of the real and personal estate of the several counties as returned to the office of the comptroller, and fixing the aggregate amount of assessment for each county on which the comptroller shall compute the State tax. The board of equalization may increase or diminish the aggregate valuations of real estate in any county by adding or deducting such sum as in their opinion may be just and necessary to produce a just relation between all the valuations of real estate in the State; but they shall in no instance reduce the aggregate valuations of all the counties below the aggregate valuations thereof as returned by the boards of supervisors to the comptroller's office; but the aggregate of the assessed valuation of the whole State shall not for the year eighteen hundred and fifty-nine be increased or diminished by the board of equalization. A statement of the amount of assessment for each county, as fixed by the board of equalization, shall be certified by said board and deposited in the office of the comptroller, as soon as completed, and before the tenth day of October in each year. The comptroller shall immediately ascertain from this assessment the proportion of State tax each county shall pay, and send a statement of the amount, by mail, to the county clerk and the chairman and clerk of the board of supervisors, of each county. If the name or residence of the chairman or clerk of the board of supervisors shall be unknown to the comptroller, he may inclose such statement in an envelope addressed to him by his name of office, and directed to the county town of the county. The county clerk shall file the statement received by him in his office, and immediately send a copy thereof to the chairman of the board of supervisors of the county.

SEC. 9. The amount of State tax which each county is to pay, so fixed and stated by the comptroller as aforesaid, shall be assessed by the supervisors or other officers authorized to make the assessment of State taxes in the tax roll for the calendar year, in and for which the same shall have been ascertained and stated by the comptroller as aforesaid, and shall be included in and collected by the annual collection of taxes in the several counties in the manner prescribed by law; and if the board of supervisors or other officers authorized to make such assessment shall neglect or refuse to include and assess such tax, or any part thereof, in said assessment roll, then the comptroller of the State may immediately proceed by mandamus

before any court having jurisdiction to compel the board of supervisors or other officers required to make such assessment to do the same or make a new assessment for the same, which shall be collected as provided for the collection of other taxes.

Laws 1880, Chap. 534.

An Act to Provide for the Taxation of Life Insurance Companies.

Sec. 1 Every life insurance company incorporated under the laws of this State shall annually, on or before the first day of February, pay to the treasurer of the State, as a tax on its corporate franchise or business in this State, a sum equal to one per centum upon the gross amount of premiums, interest and other income, exclusive of rents, received by such company during the year ending the preceding thirty-first day of December, from persons residing in this State, or investments represented by or based upon property situated in this State.

Sec. 2. Every such insurance company shall, annually, on or before the first day of February, make a return to the treasurer and comptroller of the State, signed and sworn to by its president and secretary, giving the total amount of premiums, interest and other income, exclusive of rents, received by such company during the year ending the preceding thirty-first day of December, from persons residing in this State, or investments represented by or based upon property situated in this State.

Sec. 3. If any officer of any life insurance company, required by the preceding section to make and execute a return, shall refuse or will fully neglect to make or execute the same, such officer shall be guilty of a misdemeanor, and any such officer, who in such return shall make a willful false statement, shall be subject to the pains and penalties of perjury. All taxes unpaid when due by such company under this act may be collected by action brought in the Supreme Court in the name of the people of the State by the attorney general at the instance of the comptroller, and in such action the Court may issue an injunction restraining the further prosecution of the business of the corporation named therein until such tax due and unpaid, together with interest and the costs of the action, are paid, and until the return required by this act is made.

Sec. 4. The lands and real estate of life insurance companies shall continue to be assessed and taxed where situated for State, city, town, county, village, school, or other local purposes, but the personal property of said companies, and shares of stock therein, shall hereafter be exempt from assessment or taxation except as in this act prescribed.

Laws of N. Y., 1882, Chap. 409. p. 701.

TAXATION.

Sec. 312. The stockholders in every bank or banking association organized under the authority of this State, or of the United States, shall be assessed and taxed on the value of their shares of stock therein; said shares shall be included in the valuation of the personal property of such stockholders in the assessment of taxes at the place, city, town or ward where such bank or banking association is located, and not elsewhere, whether the said stockholders reside in said place, city, town or ward or not; but in the assessment of said shares, each stockholder shall be allowed all the deductions and exceptions allowed by law in assessing the value of other taxable personal property owned by individual citizens of this State, and the assessment and taxation shall not be at a greater rate than is made or assessed upon other moneyed capital in the hands of individual citizens of this State. In making such assessment there shall also be deducted from the value of such shares such sum as is in the same proportion to such value as is the assessed value of the real estate of the bank or banking association, and in which any portion of their capital is invested, in which said shares are held to the whole amount of the capital stock of said bank or banking association. Nothing herein contained shall be held or construed to exempt the real estate of banks or banking associations from either State, county or municipal taxes, but the same shall be subject to State, county, municipal and other taxation to the same extent and rate, and in the same manner according to its value as other real estate is taxed The local authorities charged by law with the assessment of the said shares shall, within ten days after they have completed such assessment, give written notice to each bank or banking association of such assessment of the shares of its respective shareholders, and no personal or other notice to such shareholders of such assessment shall be necessary for the purpose of this act.

Sec. 313. There shall be kept at all times in the office where the business of each bank or banking association organized under the authority of this State, or of the United States, shall be transacted, a full and correct list of the names and residences of all the stockholders therein and of the number of shares held by each; and such list shall be subject to the inspection of the officers authorized to assess taxes during the business hours of each day in which business may be legally transacted.

Sec. 314. When the owner of stock in any bank or banking association organized under the laws of this State, or of the United States, shall not reside at the same place where the bank or banking associa-

tion is located, the collector and county treasurer shall, respectively, have the same powers as to collecting the tax to be assessed by this act as they have by law when the person assessed has removed from the town, ward or county in which the assessment was made, and the county treasurer, receiver of taxes or other officer authorized to receive such tax from the collector may, all or either of them, have an action to collect the tax from the avails of the sale of his, her or their shares of stock, and the tax on the share or shares of said stock shall be and remain a lien thereon from the day when the property is by law assessed till the payment of said tax, and if transferred after such day, the transfer shall be subject to such lien.

SEC. 315. For the purpose of collecting the taxes to be assessed under the last three preceding sections of this act, and in addition to any other law of this State, not in conflict with the Constitution of the United States relative to the imposition of assessment and collection of taxes, it shall be the duty of every such bank or banking association and the managing officer or officers thereof to retain so much of any dividend or dividends belonging to such stockholder as shall be necessary to pay any taxes assessed in pursuance of the last three preceding sections of this act, until it shall be made to appear to such officer or officers that such taxes have been paid.

SEC. 318. The shareholders of any bank, banking association, or corporation doing a banking business under the general banking law or a special charter of this State shall be assessed and taxed with respect to their shares of stock, only at the same rate and place, to the same extent, and in the same manner, as shareholders of national banks may be liable at the same time to be assessed and taxed by authority of the State of New York; provided, however, that no debts shall be deducted from any such assessment of any person applying for the benefit of this act, which have been deducted from the assessment of other personal property of such person; and in making application for such deduction, every person making the application shall make oath that he has not applied to have such debts deducted from any other assessmenta gainst him, and that no such deduction has been made.

SEC. 319. It is hereby declared that the true intent and meaning of the last preceding section of this act is to place and maintain shareholders of banks, associations and corporations aforesaid upon an equality, in the particular in this act referred to, with the shareholders of national banks organized under the Act of Congress entitled "An Act to provide a national currency, secured by a pledge of United States bonds, and to provide for the circulation and redemption there-

of, approved June third, eighteen hundred and sixty-four; and all acts and parts of acts inconsistent with the provisions hereof are hereby repealed."

SEC. 320. Every individual banker doing business under the laws of this State is hereby required to declare upon oath before the assessor the amount of capital invested in such banking business, and each one hundred dollars of such capital for the purpose of this act, and for the purpose of taxation, shall be held and regarded as one individual share in such banking business, and such shares are hereby declared to be personal property. If such bankers have partners, he shall declare upon oath before the assessor, the number of shares held by each of them in such banking business, ascertained as above provided; and the shares so held by any partner shall be included in the valuation of his taxable property in the assessment of all taxes levied in the town, school district or ward where such individual banker is located, and not elsewhere; and such individual banker shall pay the same and make the amount so paid a charge in his accounts with such partners; and if such individual banker have no partners he shall be held to be sole owner of all the shares in such business of banking, and the same shall be included in the valuation of his personal property in the assessment of all taxes levied in the town, school district or ward where his bank is located, and not elsewhere.

SEC. 321. Every corporation, company or joint stock association created under the laws of any other State or country and which receive deposits, loan money, sell bills of exchange or issue letters of credit, or in any other manner are engaged in business as bankers in this State, and the officers, managers or agents of any such corporation, company or association shall, annually, on or before the first day of February in each year, pay to the comptroller a State tax, as a tax on its or their business in this State, at the rate per centum hereinafter specified on the average of all sums of money received on deposit, and of all sums of money received by each corporation, company or association in connection with or on account of such business or used or employed in such business in this State, during the year ending the preceding thirty-first day of December, and for each and every year, one-half of one per centum, computed as above provided.

SEC. 324. Every trust company now, or hereafter incorporated or organized under the laws of this State, or now or hereafter incorporated or organized by or under the laws of any other State or country, and doing business in this State, shall be taxable under, and subject to the provisions of sections one, two, three, four and eight of chapter

five hundred and forty-two of the laws of eighteen hundred and eighty as amended by chapter three hundred and sixty-one of the laws of eighteen hundred and eighty-one.

Laws 1875, Chap. 371.

An act to conform the charters of all savings banks or institutions for savings, to a uniformity of powers, rights and liabilities, and to provide for the organization of savings banks, for their supervision and for the administration of their affairs.

Savings Banks declared to be Corporations.—General Powers.

Sec. 1. All savings banks or institutions for savings, now existing, or which may hereafter be organized under and by virtue of any law of this State, are hereby declared to be corporations possessed of the powers and functions of corporations generally, and as such shall have power:

1. To have perpetual succession by its corporate name.

2. To sue and be sued, complain and defend, in any court of law or equity.

3. To make and use a common seal, which may be affixed by making an impression directly on the paper and alter the same at pleasure.

4. To appoint such officers, managers and agents as the business of the corporation may require.

5. To make by-laws not inconsistent with the laws of this State or of the United States, for the management of its property and the regulation of its affairs.

6. To contract and be contracted with.

7. To receive money on deposit, to invest the same, and further transact the business of a savings bank as hereinafter provided.

8. To exercise any corporate powers necessary to the exercise of the powers above enumerated and given.

TRUSTEES TO ELECT PRESIDENT AND TWO VICE-PRESIDENTS AND OTHER OFFICERS.—VACANCIES IN THE BOARD TO BE FILLED BY TRUSTEES.

SEC. 16. The business of every such corporation shall be managed and directed by a board of trustees, of not less than thirteen, who shall elect from their number a president and two vice-presidents, and shall elect or appoint from their number, or otherwise, such other officers as they may see fit; and all vacancies in such board by death, resignation or otherwise shall be filled by the board of trustees as soon as practicable, at a regular meeting after such vacancies shall occur.

MAY RECEIVE MONEY ON DEPOSIT, INVEST THE SAME AND PAY DIVIDENDS THEREON.

SEC. 22. It shall be lawful for any savings bank to receive on deposit any sum or sums of money that may be offered for that purpose, by any person or persons, or by any corporation or societies, and to invest the same, and declare, credit and pay dividends thereon as hereinafter authorized and provided, and not otherwise.

IN WHAT MANNER TRUSTEES MAY LAWFULLY INVEST MONEYS.

SEC. 26. It shall be lawful for the trustees of any savings bank to invest the moneys deposited therein only as follows, namely:

First.—In the stocks or bonds, or interest bearing notes, or obligations of the United States, or those for which the faith of the United States is pledged to provide for the payment of the interest and principal, including the bonds of the District of Columbia, commonly known as the three-sixty-five bonds.

Second.—In the stocks or bonds of this State bearing interest.

Third.—In the stocks or bonds of any State in the Union that has not, within ten years previous to making such investment by such incorporation, defaulted in the payment of any part of either principal or interest of any debt authorized by any legislature of such State to be contracted.

Fourth.—In the stocks or bonds of any city, county, town or village of this State issued pursuant to the authority of any law of this State, or in any interest bearing obligations issued by the city or county in which such bank shall be situated.

Fifth.—In bonds and mortgages on unincumbered real estate situate in this State and worth at least twice the amount loaned thereon, but not to exceed sixty per centum of the whole amount of the deposits shall be so loaned or invested; but in case the loan is on unimproved and unproductive real estate the amount loaned thereon shall not be more than forty per centum of its actual value; and no investment in any bond and mortgage shall be made by any savings bank, except upon the report of a committee charged with the duty of investigating the same, and who shall certify to the value of the premises mortgaged, or to be mortgaged, according to their best judgment, and such report shall be filed and preserved among the records of the institution.

Sixth.—In real estate subject to the provisions of section twenty-nine of this act. (This section thus amended by L. 1880, Ch. 287, superseding L. 1880, Ch. 134, and L. 1879, Ch. 437.)

Real Estate.

Sec. 29.—It shall be lawful for any such corporation to purchase, hold or convey real estate only as follows:

Banking House.—Cost of such Building and Lot.

1. A plot whereon is erected or may be erected, a building or buildings requisite for the convenient transaction of its business, and from portions of which, not required for its own use, a revenue may be derived. The cost of such building or buildings and lot in no case to exceed fifty per cent. of the net surplus of such corporation, except by written permission of the superintendent of the banking department, except where lots have been heretofore purchased, or where maps, plans and estimates have been made for the purpose of erecting a banking building.

Real Estate Purchased at Sales upon Foreclosure of Mortgage.—Such Real Estate when to be sold.—Change of Location.—Additional Plot for Banking House.

2. Such as shall have been purchased by it at sales upon the foreclosure of mortgages owned by such corporations, or upon judgments or decrees obtained or rendered for debts due to it or in settlement effected to secure such debts; and all such real estate mentioned in the last preceding clause, shall be sold by such corporation within five years after the same shall be vested in it, unless upon application by

the board of trustees, the superintendent of the banking department shall extend the time within which such sale shall be made; and it shall be lawful for any such corporation, with the approval in writing, and under the seal of the superintendent of the banking department, to change its location within the limits of any city or town wherein it may be established; and in effecting such change of location, such corporation owning a banking house and lot may purchase such additional plot under the provisions of subdivision one of this section as the corporation may require; and such banking house and lot previously owned and occupied shall be sold, as provided in subdivision two of this section, concerning real estate acquired in satisfaction of debts.

INTEREST OR DIVIDENDS ON DEPOSIT.

SEC. 33. It shall be the duty of the trustees of every such corporation to regulate the rate of interest or dividends, not to exceed five per centum per annum, upon the deposits therewith, in such manner that depositors shall receive, as nearly as may be, all the profits of such corporation after deducting necessary expenses and reserving such amount as the trustees may deem expedient, as a surplus fund for the security of depositors, which, to the amount of fifteen per cent. of their deposits, the trustees of any such corporation are hereby authorized gradually to accumulate and hold, to meet any contingency or loss in its business from the depreciation of its securities or otherwise; provided, however, that the trustees of any such corporation may classify their depositors according to their character, amount and duration of their dealings with the corporation, and regulate the interest or dividends allowed in such manner that each depositor shall receive the same ratable proportion of interest or dividends as all others of his class.

L. 1878, CHAP. 347.—AN ACT to amend chapter three hundred and seventy-one of the laws of eighteen hundred and seventy-five, entitled "An Act to conform the charters of all savings banks or institutions for savings to a uniformity of powers, rights and liabilities, and to provide for the organization of savings banks, for their supervision and for the administration of their affairs."

(Section 1 amends the Act of 1875.)

DEPOSITS, LIMITS OF.

SEC. 2. It shall be unlawful, after the passage of this act, for any savings bank, directly or indirectly, to receive from any individual a deposit or deposits in excess of three thousand dollars, but this limitation shall not apply to deposits arising from judicial sales or trust funds.

LAWS OF NEW YORK TAXING CORPORATIONS ON FRANCHISE.

CHAPTER 361, LAWS OF 1881, AS AMENDED BY CHAPTER 151, LAWS OF 1882; CHAPTER 359 OF 1885, AND CHAPTER 501 OF 1885.

§ 1. Hereafter it shall be the duty of the president or treasurer of every association, corporation, or joint stock company liable to be taxed on its corporate franchise or business, as provided in section three of this act to make report in writing to the comptroller, annually, on or before the fifteenth day of November, stating specifically the amount of capital paid in, the date, amount and rate per centum of each and every dividend declared by their respective corporations, joint stock companies or associations, during the year ending with the first day of said month. In all cases where any such corporation, joint stock company or association shall fail to make or declare any dividend upon either its common or preferred stock during the year ending as aforesaid, or in case the dividend or dividends made or declared upon either its common or preferred stock during the year ending as aforesaid, shall amount to less than six per centum upon the par value of the said common or preferred stock, the treasurer and secretary thereof, after being duly sworn or affirmed to do and perform the same with fidelity, according to the best of their knowledge and belief, shall, between the first and fifteenth days of November, in each year, in which no dividend has been made or declared as aforesaid, or in which the dividend or dividends made or declared upon either its common or preferred stock amounted to less than six per centum upon the par value of said common or preferred stock, estimate and appraise the capital stock of such company upon which no dividend has been made or declared, or upon the par value of which the dividend or dividends made or declared amounted to less than six per centum, at its actual value in cash, not less, however, than the average price which said stock sold for during said year; and when the same shall have been so truly estimated and appraised, they shall forthwith forward to the comptroller a certificate thereof, accompanied by a copy of their said oath or affirmation, by them signed, and attested by the magistrate or other person qualified to administer the same; provided, that if the comptroller is not satisfied with the valuation so made and returned, he is hereby authorized and empowered to make a valuation thereof and to settle an account upon the valuation so made by him for the taxes, penalties and interest due the State thereon; and any association, corporation or joint stock company dissatisfied with the account so settled may within ten days appeal therefrom to a board

consisting of the secretary of state, attorney general and state treasurer, which board, on such appeal, shall affirm or correct the account so settled by the comptroller, and the decision of said board shall be final; but such appeal shall not stay proceedings unless the full amount of the taxes, penalties and interest as due on said account, as settled by the comptroller, be deposited with the state treasurer.

§ 2. If the said officers of any such corporation, joint stock company or association shall neglect or refuse to furnish the comptroller, on or before the fifteenth day of November of each and every year, with the report aforesaid, or the certificate of appraisement, and oath or affirmation, as the case may be, as required by the first section of this act, or to pay the tax imposed on such corporation, company or association within fifteen days after the first of January, as provided in the fourth section of this act, it shall be the duty of the comptroller of the State to add ten per centum to the tax of said corporation, company or association, for each and every year for which such report or certificate of appraisement and oath or affirmation were not so furnished, or for which such tax shall not have been paid, which percentage shall be assessed and collected with the said tax in the usual manner of assessing and collecting such taxes; provided, that if said officers of any such corporation, joint stock company or association shall intentionally fail to comply with the provisions of the first or fourth section of this act for one year, the comptroller shall report the fact to the governor, who, if he shall be made satisfied that such failure was intentional, shall thereupon direct the attorney-general to take proceedings, in the name of the people of this State, to declare the charter or privileges of said corporation, joint-stock company or association forfeited, and at an end; and for such intentional failure, duly found, the charter and privileges of every such corporation, company or association shall cease, end, and be determined.

§ 3. Every corporation, joint stock company or association whatever, now or hereafter incorporated or organized under any law of this State, or now or hereafter incorporated or organized by or under the laws of any other State or country, and doing business in this State, except savings banks, and institutions for savings, life insurance companies, banks and foreign insurance companies, and manufacturing or mining corporations carrying on manufactures or mining or within this State, which exception shall not be taken to include gas companies or trust companies, shall be subject to and pay a tax, as a tax upon its corporate franchise or business, into the treasury of the State annually, to be computed as follows: If the dividend or dividends made

or declared by such corporation, joint stock company or association, during any year ending with the first day of November, amount to six or more than six per centum upon the par value of its capital stock, then the tax to be at the rate of one-quarter mill upon the capital stock for each one per centum of dividends so made or declared; or if no dividend be made or declared, or if the dividend or dividends made or declared do not amount to six per centum upon the par value of said capital stock, then the tax to be at the rate of one and one-half mills upon each dollar of the valuation of the said capital stock made in accordance with the provisions of the first section of this act; and in case any such corporation, joint stock company or association shall have more than one kind of capital stock, as, for instance, common and preferred stock, and upon one of said stocks a dividend or dividends amounting to six or more than six per centum upon the par value thereof has been made or declared, and upon the other no dividend has been made or declared, or the dividend or dividends made or declared thereon amount to less than six per centum upon the par value thereof, then the tax shall be at the rate of one-quarter mill for each one per centum of dividend made or declared upon the capital stock upon the par value of which the dividend or dividends made or declared amount to six or more than six per centum, and in addition thereto, tax shall be charged at the rate of one and one-half mills upon each dollar of a valuation, made also in accordance with the provisions of this act, of the capital stock upon which no dividend was made or declared, or upon the par value of which the dividend or dividends made or declared did not amount to six per centum.

§ 4. It shall be the duty of the treasurer or other officer having charge of any corporation, joint-stock company or association, upon which a tax is imposed by either of the preceding sections of this act, to transmit the amount of said tax to the treasury of the State within fifteen days after the first day of January in each and every year.

§ 5. Hereafter it shall be the duty of the president, secretary, or other proper officer of every insurance company and every association organized or incorporated by or under any law of this State, and of every person or partnership doing an insurance business in this State (except life insurance companies, and purely mutual beneficial associations, whose fund for the benefit of members, their families, or heirs, is made up entirely of contributions of their members, and the accumulated interest thereon), to make report in writing to the comptroller annually upon the first day of August in each year, after the first day of August, eighteen hundred and eighty-one, setting forth the entire amount of premiums received on business done in this State by such

company or association, person or partnership during the year ending with the preceding thirtieth day of June, whether the said premiums were in money or in the form of notes, credits, or any other substitute for money, and every such company, association, person or partnership shall pay into the state treasury, at the date aforesaid, a tax, as a tax on its corporate franchise or business, at the rate of eight-tenths of one per centum upon the gross amount of said premiums. And every company or association organized under the laws of any other State or country, and every person or partnership doing an insurance business in this State, except as aforesaid, shall pay into the treasury on the first day of August in each year a tax at the rate of eight-tenths of one per centum on their gross premiums received by them on business transacted in this State during the year ending with the preceding thirtieth day of June, whether the said premiums were in money or in the form of notes, credits, or any other substitute for money. And every such company, association, person, partnership, or the agents and officers thereof in this State, shall make report in writing to the comptroller annually upon the first day of August in each year, setting forth the entire amount of premiums received during the period aforesaid. Provided, that the reports above required shall be made under oath or affirmation, and that it shall be the duty of the comptroller of the State to add ten per centum to the account of any company, association, person or partnership, which shall neglect or refuse for a period of thirty days to make the said report, or to pay into the state treasury the tax imposed by this section. And it shall also be the duty of the president, secretary, or other proper officer of each and every insurance company, association, partnership, and of every person liable to be taxed under this section, to make a report in writing to the comptroller on the first day of August, eighteen hundred and eighty-one, under oath or affirmation, of the entire amount of premiums received on business done in this State duringsthe six months ending with the preceding thirtieth day of June, and to pay a tax at the rate of eight-tenths of one per centum thereon. And it shall be the duty of the comptroller of the State to add ten per centum to the account of any company, association, person or partnership which shall neglect or refuse for a period of thirty days to make the said report, or to pay into the state treasury the tax imposed.

§ 6. In addition to the taxes above provided for, every corporation formed for railroad, canal, steamboat, ferry, express, navagation or transportation purposes, and every elevated railway company, and every other corporation, joint stock company or association now or hereafter incorporated or organized by or under any law of this State,

or now or hereafter incorporated or organized by or under the laws of any other State or country, and doing business in this State, and owning, operating or leasing to or from another corporation, joint stock company or association, any railroad, canal, steamboat, ferry, express, navigation, pipe line or transportation route or line, or elevated railway, or other device for the transportation of freight or passengers, or in any way engaged in the business of transporting freights or passengers, and every telegraph company or telephone company incorporated under the laws of this or any other State, and doing business in this state, and every express company or association, palace car or sleeping car company or association incorporated or unincorporated, doing business in this State, shall pay to the State treasurer, for the use of the State, as a tax, upon its corporate franchise or business in this State, a tax at the rate of five-tenths of one per centum upon the gross earnings in this State of said corporation or company or association, for tolls, transportation, telegraph, telephone or express business transacted in this State.

§ 7. The tax imposed under section six of this act shall, after the first day of August, eighteen hundred and eighty-one, be paid annually on the first day of August of each year. It shall be the duty of the president, secretary or other proper officer of the corporations, joint stock companies or associations referred to in section six of this act to transmit to the comptroller, on the first day of August in each year, a statement under oath or affirmation of the amount of the gross earnings of the said associations, corporations or joint stock companies derived from all sources during the year ending with the preceding thirtieth day of June, together with the amount of tax imposed thereon by section six. And it shall also be the duty of the president, secretary or other proper officer of the corporations, joint stock companies or associations referred to in section six of this act, to transmit to the comptroller on the first day of August, eighteen hundred and eighty-one, a statement under oath or affirmation of the amount of the gross earnings of the said associations, corporations or joint stock companies derived from all sources during the six months ending with the thirtieth day of June, eighteen hundred and eighty-one, together with the tax imposed thereon by section six of this act. And if any such corporation, joint stock company or association shall neglect or refuse, for a period of thirty days after any tax imposed by sections six or seven of this act becomes due, to make returns or to pay the same, the amount thereof with the addition of ten per centum thereto, shall be collected for the use of the State as other taxes are recoverable by law from such corporation, joint stock company or association.

§ 8. The corporations, joint stock companies and associations mentioned in this act as taxable shall hereafter be exempt from assessment and taxation for State purposes, except upon their real estate, and as herein provided; but they shall in all other respects be liable to assessment and taxation as heretofore.

§ 9. The taxes imposed by this act, and the revenue derived therefrom, shall be applicable to the payment of the ordinary and current expenses of the State, and if any corporation, joint stock company, person, partnership or association shall neglect or refuse to pay any tax by this act required to be paid, the same may be sued for in the name of the people of the State, and recovered in any court of competent jurisdiction, in an action to be brought by the attorney-general at the instance of the comptroller.

§ 10. All obligations, liabilities and taxes heretofore incurred or imposed under said act, chapter five hundred and forty-two of laws of eighteen hundred and eighty, are saved, and shall be in force as if the said act had not been hereby amended.

§ 11. The amount of capital stock which shall be the basis for tax under the provisions of section three of this act, in the case of every corporation, joint stock company and association liable to taxation thereunder, shall be the amount of capital stock employed within this State. In making to the comptroller the report in writing or certificate of estimate and appraisal of the capital stock of such corporation, joint stock company or association provided for by the first section of this act, it shall be the duty of the president or treasurer thereof, as the case may be, to state specifically the amount of capital stock employed within this State, of such corporation, joint stock company or association. Whenever the comptroller is dissatisfied with such report or certificate of estimate and appraisal, as the case may be, of any corporation, joint stock company or association whose capital is only partially employed within this State, he is authorized and empowered to ascertain, fix and determine the amount of capital employed within this State, and to settle an account for the taxes and penalties due the State thereon.

[The remaining sections are administrative only.]

SUPREME COURT OF THE UNITED STATES.

[No. 749.—October Term, 1884.]

Reported in 113 U. S., 689.

Francis W. Boyer,
Plaintiff in Error,

v.

Daniel Boyer, John Leahey and A. J. Shortall, County Commissioners of Schuylkill County.

In Error to the Supreme Court of the State of Pennsylvania.

The laws of Pennsylvania exempted from local taxation, for county purposes railroad securities; shares of stock held by stockholders in corporations, which were liable to pay certain taxes to the State, mortgages, judgments, recognizances, moneys due on contracts for sale of real estate, and loans by corporations, which were taxable for State purposes, when the State tax should be paid. The pleadings in this case admitted, in detail, large amounts of exempted property under these heads in the State: Held, That, under these circumstances, this constituted a discrimination in favor of other moneyed capital against capital invested in shares in national banks, which was inconsistent with the provisions in § 5219 690 Rev. Stat., that the taxation by State authority of national bank shares shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State. The previous decisions of this Court respecting State and local taxation of shares in national banks considered and reviewed.

The former decisions of this Court do not sustain the proposition that national bank shares may be subjected, under the authority of the State, to local taxation where a very material part, relatively, of other moneyed capital in the hands of individual citizens within the same jurisdiction or taxing district, is exempted from such taxation.

While exact uniformity or equality of taxation cannot be expected under any system, capital invested in national bank shares was intended by Congress to be placed upon the same footing of substantial equality in respect of taxation by State authority as the State establishes for other moneyed capital in the hands of individual citizens, however invested, whether in State bank shares or otherwise.

Mr. Charles W. Wells, for Plaintiff in Error.

Mr. W. J. Whitehouse, for Defendants in Error.

[March 2d, 1885.]

Mr. Justice Harlan delivered the opinion of the Court.

The plaintiff in error brought this suit in a State court of Pennsylvania, for an injunction restraining the Commissioners of Schuylkill county from levying *a county tax* for the year 1883, upon certain

shares in the Pennsylvania National Bank, an association organized under the National Banking Act. The suit proceeds upon the ground that such levy violates the Act of Congress prescribing conditions upon State taxation of national bank shares, in this, that "other moneyed capital in the hands of individual citizens" of that county is exempted, by the laws of Pennsylvania, from such taxation. A demurrer to the bill was sustained, and the suit was dismissed. Upon appeal to the Supreme Court of Pennsylvania that judgment
691 was affirmed, on the ground that the laws of the State under which the defendants sought to justify the taxation, were not repugnant to the Act of Congress.

State taxation of national bank shares was permitted by the 41st section of the Act of Congress of June 3d, 1864, 13 Stat., 111, Ch. 106, § 41, subject to the restriction that it should not be at a greater rate than that imposed upon other moneyed capital in the hands of individual citizens of the same State. But that section contained a proviso to the effect "that the tax so imposed, under the laws of any State, upon the shares of any of the associations authorized by this act, shall not exceed the rate imposed upon the shares in any of the banks organized under the authority of the State where such association is located." The case of *Lionberger* v. *Rouse*, 9 *Wall.*, 468, arose under that act. The question there was whether shares in a national bank were exempt from State taxation merely because two State banks of issue, organized before the national banking act was passed, and which held a very inconsiderable portion of the banking capital of the State, had, by their charter, the right to pay a certain per cent. on the amount of their capital stock in full of all State bonus and taxes—an amount less than that imposed upon national bank shares. The shares of other associations in the State, having the privileges of banking, except the power to emit bills, were taxed like the shares in national banks. It was held that Congress meant, by reference in the Act of 1864, to taxation of State bank shares, to require, as a condition to taxation by the State of shares in national banks, that she should, unless restrained by valid contract, tax in like manner the shares of banks of issue of her own creation. There was no question in that case of discrimination against capital invested in national bank shares in favor of moneyed capital which was invested otherwise than in bank stock.

But the Act of 1864 was so far modified by that of February 10, 1868 (*15 Stat., 34 Ch., 7*), that the validity of such State taxation was thereafter to be determined by the inquiry, whether it was at a greater rate than was assessed upon other moneyed capital in the hands of individual citizens, and not necessarily by a comparison with

the particular rate imposed upon shares in State banks. The effect, if not the object, of the latter act was to preclude the possibility
692 of any such interpretation of the act of Congress as would justify States, while imposing the same taxation upon national bank shares as upon shares in State banks, from discriminating against national bank shares, in favor of moneyed capital not invested in State bank stock. At any rate, the acts of Congress do not now permit any such discrimination. Section 5219 of the Revised Statutes is as follows:

"Nothing herein shall prevent all the shares in any association from being included in the valuation of the personal property of the owner or holder of such shares, in assessing taxes imposed by authority of the State within which the association is located, but the Legislature of each State may determine and direct the manner and place of taxing all the shares of national banking associations located within the State, subject only to the two restrictions, that the taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State, and that the shares of any national banking association owned by non-residents of any State shall be taxed in the city or county where the bank is located, and not elsewhere. Nothing herein shall be construed to exempt the real property of associations from either State, county, or municipal taxes to the same extent, according to its value, as other real property is taxed."

Whether the proposed taxation for *county* purposes of the plaintiff's shares of national bank stock is at a greater rate than is assessed, for like purposes, on other moneyed capital in the hands of individual citizens, is the single question upon which depends the affirmance or reversal of the judgment.

Before examining the statutes of Pennsylvania upon the subject of taxation, it will be well to ascertain how far the decisions of this Court have fixed the true meaning of the words "at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State."

The Supreme Court of Pennsylvania is of opinion that the Commissioners are fully sustained by the decision in *Hepburn* v. *The School Directors*, *23 Wall.*, *480*. In that case, the question was, whether the owner of national bank shares, residing in Cumberland
693 county, Pennsylvania, was exempt from a local tax by reason of a statutory exemption from all taxation in that county, except for State purposes, of "mortgages, judgments, recognizances, and money owing upon articles of agreement for the sale of real estate," except mortgages, judgments and articles of agreement given by corporations (*Laws Pa., 1868, p. 61*). The value of such securities (if they could all be properly so described), as compared with other moneyed capital in the hands of individual citizens in that locality, did not appear in that case. What the Court had to decide, and all

that it did decide, was whether the exemption from local taxation, of mortgages, judgments, recognizances, and money due upon agreements for the sale of real estate, in the hands of individuals, was a partial exemption only; that is, whether it was so substantial in its nature and operation as to effect the integrity of the general assessment for local purposes. The Court, after observing that money at interest was not the only moneyed capital to which the national banking act had reference, and that the words "other moneyed capital" included investments in bank shares and other stocks and securities, said: "This is a partial exemption only. It was evidently intended to prevent a double burden by the taxation, both of property and debts secured upon it. Necessarily, there may be other moneyed capital in the locality than such as is [not] exempt. Some part of it only is. It could not have been the intention of Congress to exempt bank shares from taxation because some moneyed capital was exempt." That case is authority for the proposition that a *partial* exemption by a State, for local purposes, of moneyed capital in the hands of individual citizens does not, of itself, and without reference to the aggregate amount of moneyed capital not so exempted, establish the right to a similar exemption in favor of national bank shares held by persons within the same jurisdiction. But it is by no means an authority for the broad proposition that national bank shares may be subjected to local taxation where a very material part, relatively, of other moneyed capital in the hands of individual citizens, within the same jurisdiction or taxing district, is exempted from such taxation. Indeed, such
694 an interpretation of the statutes might entirely defeat the purpose that induced Congress to confine State taxation of national bank shares within the limit of equality with other moneyed capital; for, it would enable the States to impose upon capital invested in such shares materially greater burdens than those to which other moneyed capital in individual hands is subjected.

The case of *Adams* v. *Nashville*, 95 *U. S.*, *19*, is also relied upon to support the judgment below. The question there raised was whether an alleged exemption from municipal taxation, under an ordinance of a city, of its interest bearing bonds, operated to exempt from like taxation the shares in a national bank located in the same city. The Court held that as the ordinance had been abrogated by subsequent legislation of the State, no such exemption existed. However, considering the question on its merits, it was said that the act of Congress did not intend "to cut off the power to exempt particular kinds of property, if the Legislature chose to do so." In illustration of this view reference was made to exemptions of homesteads, household furniture, school houses, academies and libraries—regulations sus-

tained, as a general rule, upon grounds of policy and humanity, or because the property exempted is employed for objects more or less connected with the public welfare. And it was observed that the discretionary power of the Legislature over such subjects remained as before the Act of 1868, the intention of that statute being to protect corporations formed under its authority from *unfriendly* discrimination by the States in the exercise of their taxing power. "That particular persons or particular articles are relieved from taxation is not a matter to which either class can object." It is scarcely necessary to say that this language leaves untouched the question as to the power of the State to subject the shares of national banks to taxation, when a very material portion of other moneyed capital in the hands of individual citizens and corporations is exempted from like taxation.

The Court has had occasion to examine the provisions of the national banking act in several other cases recently determined (*People* v. *Weaver*, *100 U. S., 539*; *Pelton* v. *National Bank*, *101 Ib.*, 695 *143*; *Cumings* v. *Same*, *Ib.*, *153*; *Supervisors* v. *Stanley*, *105 U. S., 305*; *Evansville Bank* v. *Britton*, *Ib.*, *323*.

From these cases may be deduced certain rules for the construction of that act.

1. That the words "at a greater rate than is *assessed* upon other moneyed capital in the hands of individual citizens," refer to the entire process of assessment which, in the case of national bank shares, includes both their valuation and the rate of percentage on such valuation; consequently, that the act of Congress is violated if, in connection with a fixed percentage applicable to the valuation alike of national bank shares and of other moneyed investments or capital, the State law establishes or permits a mode of assessment by which such shares are valued higher in proportion to their real value than is other moneyed capital.

2. That a State law which permits individual citizens to deduct their just debts from the valuation of their personal property of every kind, other than national bank shares, or which permits the taxpayer to deduct from the sum of his credits, money at interest or other demands to the extent of his *bona fide* indebtedness, leaving the remainder to be taxed, while it denies the same right of deduction from the cash value of bank shares, operates to tax the latter at a greater rate than other moneyed capital.

These decisions show that, in whatever form the question has arisen, this Court has steadily kept in view the intention of Congress not to permit any substantial discrimination in favor of moneyed capital, in the hands of individual citizens, as against capital invested in the shares of national banks. In *People* v. *Weaver*, the Court said: "As

Congress was conferring a power on the States which they would not otherwise have had, to tax these shares, it undertook to impose a restriction on the exercise of that power, manifestly designed to prevent taxation which should discriminate against that class of property as compared with other moneyed capital. In permitting the States to tax these shares it was foreseen that the States might be disposed to tax the capital invested in these banks oppressively. This might have been prevented by fixing a limit on the amount. But Congress,
696 with due regard to the dignity of the States, and with a desire to interfere only so far as was necessary to protect the banks from anything beyond their equal share of the public burdens, said: You may tax the real estate of the banks as other real estate is taxed, and you may tax the shares of the bank as the personal property of the owner, to the same extent you tax other moneyed capital invested in your State. It was conceived that by this qualification of the power of taxation equality would be secured and injustice prevented."

We come now to consider whether the laws of Pennsylvania, under which defendants propose to levy a tax, for county purposes, upon the plaintiff's shares of stock, are open to the objection that they violate the principle of equality, which the act of Congress intended to establish between capital invested in such shares, and other moneyed capital.

By a law of that State, passed March 31, 1870—upon which the defense mainly rests—it is provided: "That all the shares of national banks located within this State, and and of banks and savings institutions incorporated by this State, shall be taxable for State purposes, at the rate of three mills [subsequently four] per annum upon the assessed value thereof; and for county, school, municipal and local purposes at the same rate as now is or may hereafter be assessed and imposed upon other moneyed capital in the hands of individual citizens of this State." *Laws of Pa., 1870, p. 42.* This act suggests, upon its face, the inquiry as to what moneyed capital, in the hands of individual citizens, is subject to taxation for county and other local purposes; for, such capital, if exempted from local taxation at the date of the passage of that act, remains exempt unless the Legislature of the State has since subjected it to taxation. Evidently, in respect of taxation for local purposes, the Legislature did not intend, by the Act of 1870, to remove the then existing exemptions, and subject all moneyed capital, of whatever description, to such taxation; but only to establish an uniform rate of local taxation as between capital invested in national bank shares and such, and only such, moneyed capital as was then, or might thereafter be, subjected to taxation.

To ascertain what moneyed capital was, at the passage of the
697 Act of 1870, or has since become, exempted, in Pennsylvania from taxation for county purposes, requires an examination of

several statutes, commencing with the one passed in 1844. The latter subjected to taxation, "for all State and county purposes whatsoever," the following personal property: Mortgages, money owing by solvent debtors, whether by promissory note, penal or single bill, bond or judgement, articles of agreement and accounts bearing interest, except notes or bills for work and labor done and bank notes; shares or stock in any bank, institution or company then or thereafter incorporated by or in pursuance of any law of the State, or of any other State or government; shares of stock or weekly deposits in unincorporated saving fund institutions; public loans or stocks, except those issued by the State; money loaned or invested on interest in any other State. *2 Brightly's Purdon's Dig., 1380; Laws Pa., 1844, p. 497.*

In 1850, shares of stock in State banks created after the State banking act of 1850, were relieved from taxation for county purposes. *Laws Pa., 1852, p. 443; 1 Grant, 35.* And in 1854, all bonds or certificates of loan of any railroad company incorportated in the State were declared liable to taxation "for State purposes only." *2 Brightly's Purdon's Dig., 1369, § 81.*

By an act approved April 12, 1859, it was provided that thereafter the capital stock of all banks, savings institutions and companies whatever of the State, "shall be subject to and pay a tax into the treasury of the Commonwealth annually, at the rate of one-half mill for each one per cent. of dividend made or declared by such bank, savings institution or company," and in case of no such dividend being declared, then three mills upon a valuation of the capital stock, agreeably to the above act of 1844. The same act exempted from tax upon dividends any institution or company (except banks of issue) then liable for tax on capital stock. It was further declared that that act should not be so construed as to make building associations, plank road or turnpike companies liable for any tax to the Commonwealth, when such companies make or declare no dividends. *Laws Pa., 1859, p. 529.*

698 And by an act passed January 3, 1868, it was declared that from and after its passage the shares of stock held by any stockholder in any institution or company incorporated under the laws of the State, which in its corporate capacity is liable to, and pays into the state treasury the tax imposed by the Act of April 12, 1859, "shall not be taxable in the hands of said stockholder personally, for State, county or local purposes;" so much of the Act of 1844 as imposed a tax for State or county purposes upon any stockholder in his individual capacity being repealed in terms, without relieving such corporations from any tax then imposed by law, or their real estate from any State, county or local tax to which it then was or might thereafter be subjected. *Laws Pa., 1868, p. 1318.*

Then followed the Act of 1879, by the third section of which every incorporated company or association doing business in Pennsylvania, or having capital employed there in the name of any other company or corporation—except foreign insurance companies, banks and savings institutions—was required to pay a certain annual tax on its capital stock into the state treasury. *Laws Pa., 1879, p. 112.*

This brings us to the Act of June 10, 1881, whereby mortgages, moneys owing by solvent debtors, whether by promissory note, penal or single bill, bond or judgment; articles of agreement and accounts bearing interest—except notes or bills for work and labor done; obligations to banks for money loaned; bank notes; shares of stock in banks, banking or saving institutions or companies, then or thereafter incorporated under any law of Pennsylvania; public loans or stocks, except those issued by that State or the United States; money loaned or invested in any other State, and all other moneyed capital in the hands of individual citizens of that State, are declared "to be, and are hereby, taxable for State purposes, at the rate of four mills on the dollar of value thereof annually; *provided*, that all mortgages, judgments, and recognizances whatsoever, and all moneys due or owing upon articles of agreement for the sale of real estate, shall, after the passage of this act, be exempt from all taxation except for State purposes; *provided*, the provisions of this act shall not apply to
699 building and loan associations," the money loaned by them being subjected to the same tax as money loaned by individuals. By the second section of the same act, all corporations paying interest on a loan or loans, taxable for State purposes, whether secured by bond, mortgage, recognizance, or otherwise, are required to report to the auditor general annually the amount of such indebtedness owned by residents of Pennsylvania, and to pay into the state treasury four mills upon every dollar of such indebtedness, such tax to be deducted by the corporation paying it from the interest on such indebtedness; whereupon, "such indebtedness, whether secured by bond, mortgage, judgment or otherwise, shall be exempt from other taxation in the hands of the holders thereof." *Laws Pa., 1881, p. 99.*

Unless we greatly misapprehend the effect of this legislation, a very large amount of property made subject by an Act of 1884 to taxation for both State and county purposes, has since been relieved from the burdens of county taxation; while the imposition by the Act of 1870 upon national bank shares of local taxation at the same rate as was at the latter date, or has been since, imposed upon other moneyed capital in the hands of individual citizens of the State, leaves such shares subject to taxation as provided in the Act of 1884. The burden of county taxation, imposed by the latter act, has at all

events been removed from all bonds or certificates of loan issued by any railroad company incorporated by the State; from shares of stock in the hands of stockholders of any institution or company of the State which, in its corporate capacity, is liable to pay a tax into the state treasury under the Act of 1859; from mortgages, judgments, and recognizances of every kind; from moneys due or owing upon articles of agreement for the sale of real estate; from all loans however made by corporations which are taxable for State purposes when such corporations pay into the State treasury the required tax on such indebtedness.

As the present case comes before us upon demurrer to the bill, we have, excepting the allegations of the latter, no means of determining the value of the capital thus exempted from the county taxation which is imposed upon capital invested in national bank shares. After
700 referring to the acts of 1870 and 1881, the bill charges:

"That for the year 1881, as is shown by the public report and by the books of the auditor general of Pennsylvania, the sum of $1,692,938.66 was paid into the state treasury as tax upon the capital stock of such corporations by them in their corporate capacity, which sum of money was paid upon a gross capital stock, of the corporations paying the same, of the value approximately stated of 564 millions of dollars.

"That it appears, as is shown by the books and published report of the Secretary of Internal Affairs for the year 1881, that the total valuation throughout the State for that year of 'all mortgages, money owing by solvent debtors, whether by promissory note, penal or single bill, bond or judgment, also all articles of agreement and accounts bearing interest, owned or possessed by any person or persons whatsoever (except notes or bills for work or labor done, and all obligations given to banks for money loaned and bank notes), and all public loans or stocks whatsoever, except those issued by this State or the United States, and all moneys loaned or invested on interest in any other State, and all other moneyed capital in the hands of individual citizens of the State,' amounts to $74,931,765.

"That for the same year, as is shown by the books and published reports of the auditor general, a tax was paid into the State treasury upon corporation and municipal loans, not probably included in the foregoing sum, upon an aggregate valuation of $51,404,162.50.

"That by the provisions of Section 1 of the Act of 10 June, 1881 (P. L. 99), all mortgages, judgments and recognizances whatsoever, and all moneys due or owing upon articles of agreement for the sale of real estate, were exempt from all taxation except for State purposes.

"That the Section 2 of said Act of 1881 exempts from local taxation in the hands of the holders thereof, all loans issued by corporations paying interest thereon where such corporations pay into the state treasury the State tax of four mills on each dollar thereof, and by Act of 1 May, 1854 (P. L. 535), all bonds or certificates of indebtedness of any railroad company incorporated by this Commonwealth be and the same shall be liable to taxation for State purposes only.

701 "That the total paid in capital of all the State banks and savings institutions in said Commonwealth, other than national banks, as appears by the books and published reports of the auditor general for the year 1881, is $7,161,740.68, while the total paid in capital of the national banks located within said State, in said year, amounted to $57,452,051."

The demurrer, of course, admits these allegations of fact to be true. Their materiality is not affected by the circumstance that they are stated to appear, also, upon the books and published reports of the auditor general and the secretary of internal affairs of Pennsylvania. Upon such facts, and in view of the revenue laws of the State, it seems difficult to avoid the conclusion that, in respect of county taxation of national bank shares, there has been, and is, such a discrimination in favor of other moneyed capital against capital invested in such shares, as is not consistent with the legislation of Congress. The exemptions in favor of other moneyed capital appear to be of such a substantial character in amount as to take the present case out of the operation of the rule that it is not absolute equality that is contemplated by the Act of Congress; a rule which rests upon the ground that exact uniformity or equality of taxation cannot in the nature of things be expected or attained under any system. But as substantial equality is attainable, and is required by the supreme law of the land, in respect of State taxation of national bank shares, when the inequality is so palpable as to show that the discrimination against capital invested in such shares is serious, the courts have no discretion but to interfere.

The Supreme Court of Pennsylvania, after referring to *Hepburn* v. *The School Directors*, cited above, as having involved the same question that is now presented, and observing that the exemption is here, as there, only partial, says: "Not only is some other moneyed capital of a miscellaneous character taxable for local purposes, but all such capital of the same character as that which you desire to exempt; that is to say, the shares of State banks and savings institutions."
702 Again: "The General Assembly has authorized the taxation of the shares of these banks in no other manner and at no higher rate than other capital of a similar character." If by this language it is meant that an illegal discrimination against capital invested in national bank shares cannot exist where no higher rate or heavier burden of taxation is imposd upon them than upon capital invested in State Bank shares, or in State savings institutions, we have to say that such is not a proper construction of the Act of Congress. Capital invested in national bank shares was intended to be placed upon the same footing of substantial equality in respect of taxation by State authority, as the state establishes for other moneyed capital in the hands of individual citizens, however invested, whether in State bank shares or otherwise. As the Act of Congress does not fix a definite limit as to percentage of value, beyond which the States may not tax national bank shares, cases will arise in which it will be difficult to determine whether the exemption of a particular part of moneyed

capital in individual hands is so serious or material as to infringe the rule of substantial equality. But unless we have failed to comprehend the scope and effect of the taxing laws of Pennsylvania, and unless the allegations of the bill be untrue, the present case is not of that class.

Our attention is called by counsel for the defendants to the fact that Pennsylvania derives, probably, her principal revenues from railroads, and therefore has good reason to look to her interests, as a Commonwealth, in respect of such improvements. To this fact he refers the legislation which makes railroad securities liable to taxation for State purposes only, and exempts them from local taxation. Upon like grounds he defends the exemptions made, in respect of local taxation, in favor of the bonds and shares of other corporations that pay an annual tax into the State treasury. It is quite sufficient, in respect of such matters, to say that this Court has no function to deal with the considerations of public policy which control that Commonwealth in the assessment of property for the purposes of revenue. We have no duty beyond that of ascertaining the intention of Congress in its legislation permitting the several States to tax the shares of insti-
703 tutions organized under national authority for the purpose of providing a national currency secured by United States bonds. If the principle of substantial equality of taxation under State authority, as between capital so invested and other moneyed capital in the hands of individual citizens, however invested, operates to disturb the peculiar policy of some of the States in respect of revenue derived from taxation, the remedy therefor is with another department of the Government, and does not belong to this Court.

We are of opinion that upon the allegations of the bill the defendants should have been put to their answer. The facts may then disclose a case quite different from that made by the bill. What we have said relates to the case as now presented.

The judgment must, therefore, be reversed, and the cause remanded for further proceedings not inconsistent with this opinion.

THE PEOPLE *v.* COMMISSIONERS OF TAXES AND ASSESSMENTS, 23 N. Y., 193.

DENIO, *J.*: The position mainly argued by the counsel for the city of New York was that the existing law for the assessment and taxation of corporations of the class to which the appellant belongs, looks to the capital stock of the corporations paid in or secured to be paid in as the subject of taxation, irrespective of the manner in which it has been invested. Consistenlty with this position it is argued that it is not a circumstance of any importance that a portion of the moneys contributed by the subscribers have been invested in property not in itself subject to taxation; that it is the same thing in effect as though so much money had been lost; and if such had been the case, it is further insisted that the corporation would, notwithstanding, be liable to taxation in the whole amount of capital originally paid in, or secured to be paid in, except such portion thereof as had been paid out for the purchase of real estate. If the provisions of the Revised Statutes respecting the taxation of moneyed corporations had remained unchanged the argument would have had much weight; for the principle of taxation on which these enactments established was that the amount of capital, with the exception before mentioned, was to be taken as the amount of the personal estate of the corporation for which it was to be taxed, whether it had been impaired by losses or increased by accumulated profits. (1 R. S., 414, sections 1 to 6; Bank of Utica *v.* City of Utica, 4 Paige, 399; The People *v.* Board of Supervisors of the County of Niagara, 4 Hill, 20.)

In substance it was the institutions which were taxed under these provisions, and not the property possessed by them, at the time the assessment was made. The measure of assessment was the nominal capital originally contributed, which was compared, in distributing the public burdens, with so much property actually possessed by natural persons who were taxpayers. Under such a system it might be fairly argued that it was unimportant in what manner the moneys had been invested, for the existing property was not an element which entered into the valuation; but it was the sum which the corporation had when all the subscriptions had been paid in, and before any investment had been made. The character of the investments would be immaterial. But this rule had been changed before the assessment under consideration was made. In the year 1853, the amount of surplus profits, or reserved funds, was directed to be added to the amount of the capital, and there was a provision for exemption in the case of corporations which had not been in the receipt of net income (Ch. 654.)

It is not material to determine whether these provisions would have

affected the question, for in 1857 an act was passed which completely changed the system of assessment of these corporations. The material provision was as follows: "The capital stock of every company liable to taxation, except such part of it as shall have been excepted in the assessment roll, *or shall have been exempted by law*, together with its surplus profits or reserved funds, exceeding ten per cent. of its capital, after deducting the assessed value of its real estate, and all shares of stock in other corporations actually owned by such company which are taxable upon their capital stock under the laws of this State, shall be assessed at its actual value, and taxed in the same manner as the other personal and real estate of the county" (Ch. 456, sec. 3). It is manifest that under this provision the assessors could not any longer take the nominal capital, as, under all circumstances, the amount of the assessment. If it were alleged that this did not represent its actual value, it would be their duty to look at its market price and, if necessary, *to ascertain the character and worth of the security in which its fund had been invested. It will be equally their duty to inquire whether any of this property, into which the capital had been converted, was exempted by law from taxation. Prima facie* it may be that the nominal amount of the capital would be considered its actual value; but where it should be shown that it had met with losses, or that the investments had otherwise depreciated, *other means would have to be resorted to in order to ascertain the actual value of the assets in which its capital consisted. The market price of its shares would ordinarily furnish a practical test;* but either the assessor ort he tax payer would have a right to examine and have an estimate made of the value of the securities. (The Oswego Starch Factory v. Dolloway, 21 N.Y., 449.) The reference to exempt property in the section of the statute which I have transcribed is *in pari materia* with the fourth section of the title of the Revised Statutes relating to property liable to taxation. That section declares that all property exempted from taxation by the Constitution of this State, or under the Constitution of the United States, shall not be liable to be assessed or taxed under these provisions (1 R. S., 388). It follows, therefore, from the very language of the statutes, that if the Bank of the Commonwealth has invested a part of its capital paid in in a stock which is exempt from taxation under the Constitution of the United States, such portion is to be excepted from the assessment. The position of a bank in this respect is precisely the same as that of an individual taxpayer. It is, as a general rule, assessed and taxed for all its property of every kind; but there is an exception as to such part of it as the Constitution and laws of the Union and of the State have, upon special reasons of policy, declared shall be exempted. Whether such exempt property is found in the

hands of an individual, or in the possession of a corporation, taxed upon the actual value of its capital, the rule is the same, the exempt property is to be deducted from the aggregate valuation, and the taxes to be imposed upon the residue.

COMSTOCK, *Ch. J.*, [dissenting in the judgment but concurring on the point discussed in this extract]:

It remains to examine the distinctive theory upon which the Judges of the court below have proceeded in this case. They have conceded that the credit of the United States is universally exempt from taxation. They suggest no mode of assessing such property, whether constituting part of the capital of an individual or a corporation. The only ground, therefore, upon which they have been unable to sustain the action of the Tax Commissioners is, that taxation in respect to corporations is not upon their capital or estate, but upon their own stock, as a thing quite distinct from capital.

According to this view the relators have not been assessed in respect to their Government stocks or upon any other property, and have nothing to complain of. This conclusion seems to be derived from the use of the terms "capital stock" in the statutes which prescribe the manner of preparing the assessment rolls.

This theory only needs to be analyzed in order to demonstrate its illusory character. A just conception of the meaning of terms is the first requisite. The word "capital" is unambiguous. It signifies the actual estate, whether in money or property, which is owned by an individual or a corporation. In reference to a corporation, it is the aggregate of the sum subscribed and paid in, or secured to be paid in by the shareholders, with the addition of all gains or profits realized in the use and investment of those sums, or, if losses have been incurred, then it is the residue after deducting such losses. The corporation as a legal person is the owner or proprietor of this capital, and there is not a corporation aggregate in the world which ever owned any else except the franchise of being a corporation. The term "stock" is, perhaps, sometimes used with less precision. It may occasionally be employed to denote the same thing as capital. If that were its meaning in the statutes, of course the argument of the Supreme Court in this case would not have even a verbal criticism to rest upon. But, whenever it means anything different from the capital of a corporation, it can refer to nothing else than the interests of the shareholders or individuals. Such interests are called "stock," and the sum total of them is, appropriately enough, called the "stock" of a corporation. Those interests are the resulting estate of private persons, which flow from the nature of corporate organizations. In some respects they resemble a chose in

action, and thus are so treated in the relation of husband and wife and in other relations. More accurately, I think, they may be called equitable estates, which entitle the holders to share in the income of the capital, which is legally vested in and managed by the corporate body. The material point now is, that corporations themselves never own what is sometimes called their own stock. They have the power and capacity to create and issue stock, but when created and issued it always belongs to the individual to whom it is issued, or to his assignee. In his hands it may or may not be subject to taxation, like other private property, in the pleasure of the Legislature. In this State such property is exempted by law, because the capital itself held by corporations is assessed and taxed. In saying that corporations never own their own stock, of course I mean that which has been subscribed and and paid for or secured to be paid by the shareholders. The capacity which a corporation has within its charter of receiving subscriptions and payment for stock, and then issuing it to the individual who subscribes and pays, is a species of valuable right. But that is not material, because the laws of assessment only speak of capital or stock, or capital stock which has been paid or secured; and stock in that condition can never, in the nature of things, be owned by a corporation.

The result of this upon taxation is plain. Property is taxed according to our laws, and the owners are assessed in respect to it. *Corporations are not to be assessed in respect to their stock as something as distinct from their capital*, because in that sense they are not the owners of it. They contribute to the public burdens on the basis of their capital like the owners of private estates, and because they have nothing else which is the subject of taxation. The mode of ascertaining the value of such capital in the assessment rolls is indifferent to the question. The sum of the stock subscribed and paid for, or secured to be paid, may or may not be taken as the presumptive value. In whatever way the result is reached, *the burden is imposed on the artificial person or body in respect to the capital or estate of which it is the proprietor, and it is not imposed upon the intangible substance called "stock," which is parcelled out to individual owners.* That this is in accordance with all the principles and analogies of taxation known to our laws, it needs no argument to prove.

Plain as I think this conclusion is, the question is not exhausted without looking at the statutes under which it is supposed to arise. Let us refer to them, keeping in view *the theory we are endeavoring to refute*, which is, *that stock—as meaning something wholly different from the capital or estate of a corporation—is the subject of taxation.* The subjects of taxation and those which are exempt from it are precisely defined in the title which precedes all others in the Code of As-

sessment Laws (I. R. S., 387). In the very first section it is provided that "all lands and all personal estate within this State, whether owned by individuals *or corporations*, shall be liable to taxation," etc. *Can language more explicitly declare that it is the capital or estate of corporations which the Legislature intended, and not their stock in the sense now contended for?* In the fourth section of the same title the exemptions are specified, and among them (sub. 4) the houses, lands and personal estate of companies incorporated for the reformation of offenders, and (sub. 7), "the personal estate of every incorporated company not made liable to taxation on its capital in the fourth title of this chapter." Now it is this fourth title which contains the provisions for making up assessment rolls against corporations, in some of which the term "capital stock" is used. The reference to that title here quoted, and the use of the word "capital" in such reference, prove absolutely that the terms "capital" and "capital stock" are employed in precisely the same sense. Referring now again to the first title, we find a further provision (sec. 7) excepting "the owner or holder of stock in any incorporated company liable to taxation on its capital." Here again the subject is clearly defined. *Stock is not to be taxed, but capital is; the one is marked as the property of the individual, the other as that of the corporation.*

Passing the second and third titles, which relate to the assessment and collection of taxes against individuals, and to subjects connected therewith, we come to the fourth, which relates to corporations (I. R. S., 414). In the very first section we find it declared that corporations shall be liable to taxation on their capital in the manner hereinafter prescribed. The grounds for a verbal criticism, slight as they are, would not exist at all but for the sixth section, which, as we have seen, relates to the assessment rolls. But the very first requirement of that section is that the assessors shall enter the names of corporations and the "property" of each in the manner specified, and the first specification is the "capital stock paid in or secured to be paid in." Again, the tenth section of the same title declares that the "capital stock" shall be assessed, etc., unless the corporation shall be entitled to commute its taxes, in which case no tax shall be imposed on the "property" of such corporation. Thus we find the words "capital," "capital stock" and "property" indiscriminately used throughout this title to designate the estate of a corporation. It may well be that before the Act of 1857 such estate was to be taken at its nominal value; that is to say, estimated at the amount of capital originally subscribed and paid or secured without regard to depreciation and loss. This is indifferent, as we have shown. The point of discussion now is that the estate, or capital, at whatever valuation, and not the stock in the sense

of that term contended for, is the subject dealt with by the assessment laws. Indeed, we may take the very words on which the criticism arises: "Capital stock paid or secured to be paid in." I affirm that these words are descriptive of nothing else than capital. The sum subscribed and paid in, or secured or be paid in, are the capital of a corporation in the real and actual sense. Stock, on the other hand, is paid for, and is not "paid in." It is the thing which the subscriber receives in exchange for what he pays in. One of those values, that is, the sum paid, is held by the corporation, and becomes its capital. The other is given to the shareholder, and become his stock. They are of totally different natures. The one is the object of taxation, the other is not. This appears to me so plain in reason, and upon the language of all the statutes referred to, that I pursue this point no further.

A single additional observation ought to be made upon the Act of 1857. That statute besides introducing, as we have seen, the principle of actual value as the basis of taxation, has declared in express words an exemption of whatever is exempted by other laws—in addition to the exceptions which are made in the assessment rolls. This clause was intended, out of abundant caution, to remove all the differences which could be imagined or suggested between the rules of taxation as to individuals, and those in respect to corporations. The language necessarily refers to all property which was exempt under pre-existing statutes. It cannot refer to the stock of the corporation, held "by the State or by literary and charitable institutions," because that exception is made in the assessment rolls. In addition to this exception, we have the words, "or as shall have been exempted by law," referring certainly to all laws exempting property from taxation. In those laws we find embraced stocks of the Government of the United States; and the right to hold them free from taxation would seem more plain in favor of a corporation than an individual, because the privilege is declared twice, instead of once only.

PEOPLE *v.* COMMISSIONERS (BANK TAX CASE), 2 WALLACE, 200.

MR. JUSTICE NELSON: The question involved is whether or not the stock of the United States, in which the capital of the Bank of the Commonwealth is invested, is liable to taxation by the State of New York under an act passed by its Legislature, 29th April, 1863; or, to state the question more directly, whether or not that act imposes a tax upon these stocks thus invested in the capital of the bank.

A case between this bank and others in the city of New York and

the Commissioners of Taxes came before this Court at the December term, 1862, in which it was determined that the capital of the banks invested in the stocks of the United States were not taxable under the State laws. The case was reported in 2 Black, 620 (*ante*, 451). The act of the Legislature under which the tax was then imposed provided that the capital stock of every company liable to taxation, etc., "shall be *assessed at its actual value*, and taxed in the same manner as the other personal and real estate of the country." It appeared in that case that a large portion of the capital of the bank was invested in United States stocks and owned by it, and which had been assessed and taxed by the commissioner. The Court, for the reason stated in the opinion, held that the tax was a tax upon the stock, and which, being exempt from State taxation by the settled law of this Court, was illegally imposed.

The statute under which the present case has arisen has been passed since the above decision, and is as follows:

"All banks, banking associations, etc., shall be liable to taxation on a *valuation equal to the amount of their capital stock paid in, or secured to be paid in*, and their surplus earnings, etc., in the manner now provided by law," etc.

It will be remembered that the previous act, the Act of 1857, directed that the capital stock of the bank should be assessed and taxed *at its actual value*. By the present act, as is seen, the taxes imposed on the *valuation equal to the amount of their capital paid in or secured to be paid in*, etc.

Looking at the two acts, and endeavoring to ascertain the operation or change in the law from the language used, the intent of the lawmakers would seem to be quite plain, viz.: a change simply in the mode of ascertaining or fixing the amount of the capital of the banks, which is made the basis of taxation. By the former the *actual value* of the capital, as assessed by the commissioners, is prescribed. By the latter, the capital paid in or secured to be paid in, in the aggregate, is the valuation prescribed.

When the capital of the banks is required or authorized by the laws to be invested in stocks, and among others, in United States stocks, under their charters or articles of association, and this capital thus invested is made the basis of taxation of the institutions, there is great difficulty in saying that it is not the stock thus constituting the *corpus* or body of the capital that is taxed. It is not easy to separate the property in which the capital is invested from the capital itself. It requires some refinement to separate the two thus intimately blended together. The capital is not an ideal, fictitious, arbitrary sum of money set down in the articles of association, but, in the theory and

practical operation of the system, is composed of substantial property, and which gives value and solidity to the stock of the institution. It is the foundation of its credit in the business community. The Legislature well knew the peculiar system under which these institutions were incorporated, and the working of it; and, when providing for a tax on their capital at a valuation, they could not but have intended a tax upon the property in which the capital had been invested. We have seen that such is the practical effect of the tax, and we think it would be doing injustice to the intelligence Legislature to hold that such was not their intent in the enactment of the law.

We will add that we have looked with some care through the statutes of New York relating to the taxation of moneyed corporations, including the Act of 1823, in which the first material change was made in the system, the Act of 1825, the revision of 1830, *the Acts of 1857* and of 1863; and it will be seen in *all of them* that the tax is imposed on the *property of the institutions*, as contra-distinguished from a tax upon their privileges or franchises. Since the Act of 1825 the capital has been adopted as the basis of taxation, as furnishing the best criterion of the value of the property of which these institutions were possessed. Under their charters or articles of association this amount was paid in, or secured to be paid in, by the stockholders or associates to the corporate body or ideal person constituting the capital stock, to be managed and disposed of by directors or trustees in furtherance of the objects and purposes for which the institutions were created. It constituted the fund raised by the corporators, with which the institutions began and carried on the particular business in which they were engaged. The injunction of the charters, which required this capital to be paid in, made it necessarily substantial property. The amount might fluctuate according to the good or ill fortune of the enterprise. It might become enhanced by gains in business, or diminished by losses; but, whether the one or the other, the tax in contemplation of the Legislature and of the charters was imposed on the property of the institution consisting of its capital In case of permanent loss, a remedy against grievous taxation was always at hand by a reduction of the capital.

Having come to the conclusion that the tax on the capital of the Bank of the Commonwealth is a tax on the property of the institution, and which consists of the stocks of the United States, we do not perceive how the case can be distinguished from the cases heretofore before the Court, and reported in 2 Black, 620.

PEOPLE EX REL *v.* COMMISSIONER OF TAXES, 35 N. Y., 432.

DAVIES, *C. J.:* At the time when the assessments were made, which passed under the review of this Court, and of the Supreme Court of the United States, in Churchill's case (*sub nom* Van Allen *v.* Assessors, 3 Wallace, 573), the banks organized under the authority of this State were taxed upon *their capital. The corporations themselves, and not the shareholders*, were taxed and assessed, and the assessment was upon the amount of their capital stock. If the whole or any portion of such capital was invested in the stocks and securities of the United States, then the same was neccessarily deducted from the amount of such capital, and the assessment confined to the residue. Such a mode of taxation in respect to the banks authorized under the laws of this State, the Supreme Court of the United States held, precluded the taxation under the authority of this State of the shareholders in the national banks, as such taxation was in conflict with the second proviso of the 41st section of the Act of Congress. We have seen that, for this reason, the assessment and taxation made and levied under the law of March 9th, 1865, were held to be illegal and void by the Supreme Court of the United States. This difficulty which existed as to the validity of the assessments made under the Act of 1865, has now been removed by the Act of April 23, 1866, already quoted. By the terms of the latter Act, after its passage, no tax can be assessed upon the capital of any bank or banking association organized under the authority of this State; and said Act also declares that the stockholders in said banks, whether National or State, shall thereafter be assessed and taxed on the value of their shares or stock therein. The Act has, therefore, adopted a uniform system for the taxation of the shareholders in the banks of this State, and of the national banks located therein in corformity to the decision of the Supreme Court of the United States, without whhic uniformity that Court had decided this State could not lawfully subject to taxation the shareholders in the national banks located therein.

Davies, *C. J.*: At the time when the assessments were made, which passed under the review of this Court, and of the Supreme Court of the United States, in Churchill's case (*sub nom.* Van Allen *v.* Assessors, 3 Wallace, 573), the banks organized under the authority of this State were taxed upon *their capital. The corporations themselves, and not the shareholders*, were taxed and assessed, and the assessment was upon the amount of their capital stock. If the whole or any portion of such capital was invested in the stocks and securities of the United States, then the same was neccessarily deducted from the amount of such capital, and the assessment confined to the residue. Such a mode of taxation in respect to the banks authorized under the laws of this State, the Supreme Court of the United States, held, precluded the taxation under the authority of this State of the shareholders in the national banks, as such taxation was in conflict with the second proviso of the 41st section of the Act of Congress. We have seen that, for this reason, the assessment and taxation made and levied under the law of March 9th, 1865, were held to be illegal and void by the Supreme Court of the United States. This difficulty which existed as to the validity of the assessments made under the Act of 1865, has now been removed by the Act of April 23, 1866, already quoted. By the terms of the latter Act, after its passage, no tax can be assessed upon the capital of any bank or banking association organized under the authority of this State; and said Act also declares that the stockholders in said banks, whether National or State, shall thereafter be assessed and taxed on the value of their shares or stock therein. The Act has, therefore, adopted a uniform system for the taxation of the shareholders in the banks of this State, and of the national banks located therein in corformity to the decision of the Supreme Court of the United States, without whhic uniformity that Court had decided this State could not lawfully subject to taxation the shareholders in the national banks located therein.

121-138

U. S. SUPREME COURT.

In Equity.

OCTOBER TERM, 1886—No. 1258.

THE MERCANTILE NATIONAL BANK OF THE CITY OF NEW YORK,

Appellant,

vs.

THE MAYOR, ALDERMEN AND COMMONALTY OF THE CITY OF NEW YORK, ET AL.,

Appellees.

BRIEF OF APPELLEES.

JAMES C. CARTER,
Counsel for Appellees.

U. S. Supreme Court.

IN EQUITY.

OCTOBER TERM, 1886, No. 1258.

THE MERCANTILE NATIONAL BANK OF THE CITY OF NEW YORK,
Appellant,

vs.

THE MAYOR, ALDERMEN AND COMMONALTY OF THE CITY OF NEW YORK AND JAMES MCLEAN, Receiver of Taxes,
Respondents.

STATEMENT.

The bill in this case was filed by the complainant, a National Bank in the city of New York, to restrain the collection of a tax levied for the year 1885, upon its shareholders in respect of their shares upon the basis of assessments of such shares made by the assessing officers of the city of New York.

The general ground upon which the complainant asserts a right to this relief is that the tax levied as above mentioned

and the assessments upon which it was based, are illegal and void for the reason that the taxation thus sought to be imposed is greater than that imposed by the State "upon other moneyed capital in the hands of individual citizens of such State."

It is not pretended that any of the assessments complained of are *erroneous* in consequence of any failure to comply with the provisions of the law of the State which authorizes them; but it is insisted that *that law* is itself invalid by reason of an alleged failure on the part of the State to comply with one of the conditions imposed by section 5219 of the U. S. R. S., upon the permission therein given to the States to tax the shares of the National Banks.

The State law thus assailed is to be found in section 312 of the Act of July 1st, 1882 (Laws of New York, 1882, vol. I, p. 701), entitled "An Act to revise the Statutes of this State relating to Banks, Banking and Trust Companies," and is as follows:

"The stockholders in every bank or banking association, "organized under the authority of this State or of the United "States, shall be assessed and taxed on the value of their "shares of stock therein. Said shares shall be included in "the valuation of the personal property of such stockholders "in the assessment of taxes at the place, city, town or ward "where such bank or banking association is located, and not "elsewhere, whether the said stockholders reside in the said "place, city, town or ward, or not; but in the assessment of "said shares each stockholder shall be allowed all the deduc-"tions and exceptions allowed by law in assessing the value "of other taxable personal property owned by individual "citizens of this State, and the assessment and taxation shall "not be at a greater rate than is made or assessed upon other "moneyed capital in the hands of individual citizens of this "State. In making such assessment there shall also be "deducted from the value of such shares such sum as is in "the same proportion to such value, as is the assessed value "of the real estate of the bank or banking association, and "in which any portion of their capital is invested in which

"such shares are held to the whole amount of the capital "stock of said bank or banking association. Nothing herein "contained shall be held or construed to exempt the real "estate of banks or banking associations from either State, "county or municipal taxes, but the same shall be subject to "State, county, municipal and other taxation to the same "extent and rate, and in the same manner according to its "value as other real estate is taxed. The local authorities "charged by law with the assessment of the said shares shall, "within ten days after they have completed such assessment, "give written notice to each bank or banking association of "such assessment of the shares of its respective share-"holders, and no personal or other notice to such share-"holders of such assessment shall be necessary for the pur-"pose of this act."

Nor is the objection of the complainants to the assessments founded upon anything *contained in* this law. *It* certainly could hardly be objected to. It seems to have been most industriously framed to comply with every requirement of the national statute and indeed contains provisions designed to place state and national banks upon an exact equality which are not required by that statute.

The method adopted by the complainants in their effort to show the alleged discrimination unfriendly to the national banks is two-fold. In the first place they go *outside* of this statute and subject the whole body of the legislation of the State of New York upon the subject of taxation to a rigid scrutiny; and assert that by this outside positive legislation that state has *exempted* a prodigious amount of *personal property* from state taxation.

In the next place they go outside of all *legislation* and endeavor to show approximately how large an amount of personal property actually *escapes* taxation, with the view either of imputing a supposed enormous avoidance of taxation to the direct operation of the exempting laws, or of arguing that a failure to fully execute the laws either from intrinsic difficulty, the neglect of officials, or other causes is equivalent to an affirmative exemption.

It is evidently assumed by the complainants that the decision of this Court in Boyer *vs.* Boyer (113 U. S. 689) sanctions such a method of attacking the taxation by a State of the shares of the National banks, and their case is apparently framed with the view of bringing themselves within the doctrine supposed to have been established by that case.

This mode of presenting the case enables the complainants to add together many different items of asserted exemptions, some of them real and others fictitious, and thus to form an aggregate so large as, when viewed by itself, and without reference to the fictitious character of some of the asserted exemptions, and the justifiable reasons of the real ones, to tend to create an impression at the start that the conditions of the act of Congress have not been complied with.

But it is believed that a just scrutiny of the system of taxation in force in the State of New York will entirely refute any assertion that that State has actually made, or attempted to make, any unjust discrimination against the national banks in apportioning the burden of taxation.

It would be an impossible task to establish by very satisfactory evidence the actual facts in relation to the values of the moneyed capital of a great State like New York in all the diversified forms in which it is invested. To take an inventory of the capital of five millions of people is beyond the power of a court. The only available means of reaching an estimate, even, are found in the reports of various public officers; and these are entitled to very different degrees of trustworthiness; some having a high measure of accuracy, and others little or none. In order to expedite this controversy, however, it was agreed for the purposes of the case, that certain conclusions upon matters of fact should be taken as true.

The cause was tried upon such an agreed statement before the Circuit Judge (Mr. Justice Wallace). He dismissed the bill and the appeal is taken from the decree of dismissal.

First Point.—There is neither in the general policy of New York relating to taxation, nor in any subordinate enactment designed to carry out that policy, any ground for even a suspicion of an *intent* to make a discrimination unfavorable to the holders of shares in the National banks. If any such discrimination has been made, it was wholly unintentional.

1. No such intent is charged in the bill.

2. But it would be unjust to the State to leave this point to such inferences only as might arise from the absence of charge and proof. The affirmative evidence should be pointed out. Her *general* system of taxation established long before the existence of national banks, and still subsisting, is designed to subject *all property* of whatever nature to the *same* burden. It has stood for more than fifty years expressed as follows:

"All lands and all personal estate within this State, "whether owned by individuals or corporations, shall be "liable to taxation, subject to the exemptions hereinafter "specified" (R. S. Part 1, chap. 18, title 1, § 1).

"The term land, as used in this chapter, shall be con- "strued to include the land itself, including land under "water, all buildings and other articles erected "upon, or affixed to the same, all trees and underwood "growing thereon, and all mines, minerals, quarries and "fossils, in and under the same, except mines belonging "to the State; and the terms real estate and real property "whenever they occur in this chapter, shall be construed "as having the same meaning as the term land thus de- "fined" (Section 3 of the same title).

"The terms personal estate and personal property "whenever they occur in this chapter shall be construed "to include all household furniture, moneys, goods,

"chattels, debts due from solvent debtors, whether on "account, contract, note, bond or mortgage, public stocks "and stocks in moneyed corporations. They shall also "be construed to include such portion of the capital of "incorporated companies, liable to taxation upon their "capital as shall not be invested in real estate" (Sec. 4 of same title).

3. The *exemptions* mentioned in the first above section are as follows:

"The following property shall be exempt from taxa- "tion:

"1. All property, real or personal, exempted from "taxation by the Constitution of this State, or under "the Constitution of the United States;

"2. All lands belonging to this State or the United "States;

"3. Every building erected for the use of a college, "incorporated academy, or other seminary of learning; "every building for public worship; every school- "house, court-house and jail; and the several lots "whereon such buildings are situated, and the furniture "belonging to each of them;

"4. Every poor-house, alms-house, house of industry, "and every house belonging to a company incorporated "for the reformation of offenders, or to improve the "moral condition of seamen, and the real and personal "property used for such purposes belonging to or con- "nected with the same.

"5. The real and personal property of every public "library.

"6. All stocks owned by the State, or by literary or "charitable institutions;

"7. The personal estate of every incorporated "company not made liable to taxation on its capital, in "the fourth title of this chapter.

"8. The personal property of every minister of the "gospel, or priest, of any denomination; and the real "estate of such minister, or priest, when occupied by "him, provided such real and personal estate do not "exceed the value of one thousand five hundred dollars; "and

"9. All property, exempted by law from execution" (Sec. 4 of above title).

There has been no substantial change in these exemptions since the passage of the first National Bank Act. They are, moreover, such only has have long been approved by the general policy of most States. It is, therefore, quite impossible that these should contain any intentional discrimination unfavorable to the National Bank.

4. The *first step* taken by the State of New York under the permission given by the U. S. Banking Act, of 1864, to tax the shares of national banks, was by sec. 10 of the Act of March 9th, 1865 (Laws of New York, 1865, ch. 97, page 172). This bears on its face affirmative evidence of an *intent* to comply in the utmost good faith with the conditions required by Congress. It declared in express terms that the rate of taxation should not exceed that "assessed upon other moneyed "capital in the hands of individuals of this State," thus employing the very language of the principal restriction in the national law.

There was at that time a further restriction in the National law to the effect that the tax imposed upon the shares of the National banks should not exceed the rates imposed upon shares in the State banks. The State could not *in terms* comply with this without changing its system of taxation in respect to corporate bodies, and as State banks were by that system subjected to taxation on their *capital*, at the same rate as that

imposed upon the national bank shares, the Legislature acted upon the view that there was a *substantial* compliance with it and omitted to shift its taxation on the State banks from the capital in the hands of the banks to the shares in the hands of the shareholders.

This Court, however, regarded it as essential to the validity of the law that the *shares* of the state banks should be taxed as such, and this made it necessary for the State to amend its law in that particular. It is manifest that in this piece of legislation there was no *intentional* unfriendly discrimination.

Van Allen *v.* The Assessors, 3 Wall, 573.

5. Thereupon in the next year the Legislature promptly acted upon the suggestion of this Court and passed another law, which shifted the taxation of state banks from the capital in the hands of the corporations to the *shares* in the hands of the individual shareholders, and placed the national and state banks upon precisely the same footing (Laws of 1866, chap. 761, p. 1647).

But another case was made up and taken to this Court in which *two* points were made: *First*, that a tax by the *State* upon the shares of the *state* banks without providing for a deduction in respect of any capital of such banks which might be invested in national bonds was in effect taxing such bonds, and therefore invalid, and *consequently*, inasmuch as the taxation of the shares of national banks was by national law made dependent for its validity and extent upon the taxation of the shares of State banks, the tax on the shares of national banks was also invalid. *Second*, that inasmuch as in the taxation of individuals and corporations, such as insurance companies, taxed upon their capital, provision was made for a deduction of national bonds, and no such provision made in respect of the tax upon the shares in the na-

tional banks, there was an unfriendly discrimination against the banks, and in favor of "other moneyed capital in the hands of individuals."

Both these objections were overruled by the Court: The first was declared to have been disposed of by the case of Van Allen *vs.* The Assessors; and to the second the answer given was that so far as related to the deduction of national bonds in the assessment of the property of individuals, that had no bearing, for the reason that the test adopted by Congress was a reference to such moneyed capital in the hands of individuals as was *assessable*, and so far as related to the deduction of such bonds in the assessments against insurance companies the objection was without point, for the reason that moneyed capital in the hands of corporations was not within the words or the contemplation of the act of Congress.

People *vs.* The Commissioners, 4 Wall, 244.

6. Still another effort was made by the national banks in New York to escape, and this time upon the ground that whereas, in the assessment of the personal property generally of individuals, which would include moneyed capital in their hands, they could deduct debts owed by them, yet the scheme devised for assessing the shares of the holders of bank stock made no provision for such deductions and consequently involved the imposition upon them of a greater burden than that imposed upon the moneyed capital of individual citizens. This objection was sustained by the Federal tribunals.

The National Exc. Bank *vs.* Wells; 18 Blatch., 478.
The People *vs.* Weaver; 100 U. S., 539.

The Legislature of New York, in obedience to this decision, again amended the law, and made provision

for a deduction of debts in the assessments of shares of stockholders in banks (Laws of New York, ch. 596, p. 888).

7. Nothing more can be needed to show the uniform intention of the Legislature of New York running through its whole legislation, to comply in abounding good faith with the requirements of the National Banking Act upon which permission is given to the States to tax the shares in those banks.

Second Point.—It is not, however, contended by the respondents that the absence of any intent on the part of the State to make a discrimination in taxation unfriendly to the shareholders in national banks, or the presence even of an affirmative intent to place such shareholders on the basis of entire equality with the individual holders of moneyed capital will of themselves be enough to justify the taxation of such shareholders. It is conceded that if the system of taxation adopted by the State, in its actual working, necessarily *operates* to impose a greatly unequal burden upon those shareholders, as compared with that imposed upon the individual owners of moneyed capital, there is a failure to comply with the condition imposed by Congress upon the privilege given to the States to tax them. But the intent to comply in good faith with the requirements of Congress is by no means unimportant. The failure to reach some moneyed capital, if it arose from an *intent* to discriminate, would have a very different significance from that which would attach to it were it merely an incidental consequence of the State system of taxation which was itself free from any such intent.

Third Point.—The complainant's bill recognizes the fact that numerous decisions of this Court have determined every possible question which could be made concerning the method adopted by the State of New York for the taxation of shares of national banks save one. This one which, upon the authority of the decision in Boyer *vs.* Boyer (113 U. S., 689), is assumed by the bill to be still open, is whether that State has *exempted from taxation* so large an amount "of moneyed capital in the hands of individuals" as to justify a judicial declaration that the State has not complied with the condition prescribed by section 5219 of the U. S. R. S.

Viewing the case made by the complainant *on its general aspect*, it will be perceived that it is wholly insufficient to invoke the application of the doctrine of Boyer *vs.* Boyer.

1. That doctrine was that State taxation of the shares of national banks may be invalid where a *part* of moneyed capital in the hands of individual citizens is exempted from taxation *so large and material as to prove an unfriendly discrimination.* To apply this doctrine, it is necessary to know, not only the amount exempted, but the *whole amount*, for otherwise it cannot be determined whether the *part exempted* is material.

   No attempt is made to show the whole amount of moneyed capital in the hands of individual citizens except by vague conjecture.

2. The grounds of this vague conjecture are three: *First*, We have it found that the *assessed real property* of the of the whole State is $2,761,973,845, from which it is expected that we are to guess—this is all that can be done—that the amount of *personal property* of all descriptions is

very large; but it does not help very much to know what the amount of *personal property* of all descriptions, both of individuals and corporations, is, when the precise information needed is the whole amount of *moneyed capital in the hands of individuals. Second*, We have it found that the par value of all the shares of National and State banks was, taken together, $105,869,860. But surely this does not enable us to form a conjecture even, as to what the amount was of other moneyed capital in the hands of individuals. *Third*, We have it found that in the *city* of New York the assessed valuation of all *personal property* was $202,673,866, of which $60,746,294 was composed of shares in the State and National banks. This would leave $141,926,572 as the assessed valuation of all other personal property in said city. But this has no tendency to show the actual amount of *moneyed capital* in the hands of *individual citizens* throughout the *whole State.*

3. It may be that the facts above mentioned justify a suspicion, perhaps a conclusion, that *personal property generally*, escapes taxation to a far greater extent than real property. But this is common knowledge. Everyone knows that the effort to discover and subject personal property to taxation is encumbered with manifold difficulties which generally serve to make the success very partial and limited.

4. But, surely, the *failure to execute* the laws which require the taxation of personal property generally cannot be imputed to the State, as an *exemption* of such property from taxation, unless, indeed, it is shown that such failure is to be ascribed to an intent on the part of the taxing officers to discriminate against the national bank shares, by not taxing moneyed capital in the hands of individuals, and no such intent is pretended.

5. The facts found do indeed tend to show that in the *city* of New York the assessed value of the national bank shares approaches somewhat nearly to the par value of the whole number of such shares; from which it may be *conjectured* that all other moneyed capital in the hands of individuals, so far as that city in concerned, is not so fully discovered and taxed as national bank shares are. But this tends only to show that that is, in fact, true, which, from the nature of the case, we know must be true. The shares of bank stock in the City of New York are as easily ascertainable as a piece of real property, and their actual value much more easily ascertainable, for the market price proves it with the greatest precision. Not so with other property in the hands of individuals. This inequality in the facility with which these different descriptions of personal property can be discovered, valued and subjected to taxation must always exist under any system of taxation.

6. Moreover, this effort of the complainant to simply show a failure by the State to successfully reach and subject the personal property of individuals to taxation, while at the same time it succeeds in finding and taxing real property and corporate property, is misplaced for another reason. It proceeds on the assumption that all personal property which escapes taxation *ought* to be taxed. But this is not so. A very large amount is actually exempted in obedience to reasons of public policy; and it was no part of the intention of Congress to forbid or condemn such exemptions when made in good faith. The single consideration that the aggregate of the assessments of the personal property of individuals represents a sum from which all debts have been deducted deprives such aggregate of any supposed significance.

Fourth Point –Turning to the *particular allegations* of the bill, it appears that the complainants attempt to make out a case by showing that several descriptions of moneyed capital in the hands of individual citizens are *exempted* from taxation by *law*, and the effort is, by adding the several amounts thus alleged to be exempted together, to induce a belief that the *aggregate* is so large as to justify, without other knowledge of the whole amount of such capital, the conclusion that the condition imposed by Congress has not been complied with. The only way in which such a case can be completely met is to subject the several items to scrutiny, with the view of determining whether they are entitled to a place in taking an account of unjustifiable exemptions. Such a scrutiny will show that the complainant's case is wholly insufficient for the reason that none of these alleged exemptions, or but an inconsiderable part of them, are entitled to be taken into the account. They are either not real exemptions; or, if real, are not exemptions of moneyed capital in the hands of individual citizens, or are made in pursuance of motives of policy not intended to be condemned by the conditions imposed by Congress.

I.—Among the admitted facts is a statement that the aggregate value of the shares of stock of all the moneyed and stock corporations in the State (not including life insurance companies, trust companies, or state or national banks) amounted to the sum of $755,018,892 (Record, fol. 57); and this is alleged to be exempted from taxation notwithstanding the whole capital of the corporations is taxed as heavily as other property, because there is no taxation imposed upon the *shareholders in respect of their shares*.

It will be observed that this is the principal item in the alleged large aggregate of exemptions, and it will

hereafter appear that the other items, so far as they do constitute real exemptions are entirely defensible on familiar principles. If, therefore, this item is not shown to be an exemption such as is entitled to be taken into account in the inquiry how large a part, if any, of moneyed capital in the hands of individual citizens is exempted from taxation, the complainant's case is left without any substantial foundation.

It cannot be thus taken into the account for three distinct reasons:

First—Shares of stock in corporate bodies are not, either in strictness of speech, or within the meaning of section 5219 of the U. S. R. S., "*moneyed capital.*"

Second—If they are, they are not moneyed capital "*in the hands of individual citizens.*"

Third—Although not *in form* subjected to taxation in New York, they are so subjected in every sense material to the present inquiry.

1. They are not *moneyed capital.* Capital is a word used in various senses. With the political economists it means so much of the *savings* of past production as is set aside and *destined* for the support and carrying on of future production. This excludes a vast amount—indeed, by far the larger amount of existing *property.* It excludes, of course, all *real* property; and all *personal* property not adapted to, or not destined for the maintenance of future production—all property used in, or destined for, the consumption of luxuries, or providing libraries, academies or colleges, or supplying a multitude of other wants which have no immediate relation to productive industry. (Mills' Political Economy, chap. IV.)

A merchant or mercantile firm designates as *capital* the *fund*, invested or univested, without which his or its business cannot be carried on, and from the employment of which *profits* are expected to be derived. And

what is called the *capital* of business *corporations* is substantially the same thing.

A person not engaged in business designates by the word capital, all his property available for the purposes of gaining *income*.

This word is probably used in the statute under notice, in a sense sufficiently broad to embrace *all* the meanings above mentioned. It is used in connection with the subject of taxation, and may be properly regarded as embracing all forms of personal property which are under any circumstances designated as capital.

But "*moneyed* capital" describes but a part of the things which the unqualified word embraces. And what is that part? It cannot mean money *alone*; something broader than that was intended; yet it must mean something which has close resemblances or relations to money. It is the characteristic of money that it may be used as a means or instrumentality by which capital of any desired description can be instantly procured. It will pay the wages of laborers and buy the food and clothing requisite in order to carry on productive industry. And the man of leisure can lend or invest it so as to produce the desired *income* without becoming itself dissipated. And what money will thus do, all other forms of personal property easily convertible into money, without great fluctuation in value, will enable to be done. Hence, those whose business it is to deal in money—to loan and borrow—keep their capital partly in money and partly in those forms of property easily and safely reducible to money. These forms of property are what are rightly understood, and what the framers of the statute in question understood, as *moneyed capital*: that is to say, capital which may be made to answer, and which is commonly used to answer the purposes of money. They include bonds, bills, notes, mortgages and other securities representing *debts to be paid*.

They do *not* include the stocks of corporate bodies. There may, indeed, be some of them whose value is so certainly assured and so little likely to change as to furnish a safe medium for the temporary investment of money; and in such exceptional instances they may perform the functions of banking capital. But the *rule* is otherwise. Such stocks are merely certificates of beneficial interests in the property and businesses to which they relate. They do not even *represent* moneyed capital, except in those instances in which the corporate bodies are moneyed corporations; and these constitute a very small minority. In real estate corporations, they represent interests in real estate; in railroad corporations interests in railroads; in manufacturing corporations interests in the buildings, machinery and business of such companies, etc., etc.

2. But even if such shares are "moneyed capital," they are not moneyed capital "*in the hands of individual citizens.*" In such cases the shareholders have nothing *in their hands.* This, of course, means in their *possession*, or, what is equivalent, under their *control.* But the property and business to which such shares relate is in the possession and under the control of the corporate bodies. No shareholder, nor all together, can exercise over them any direct control.

Surely the words "moneyed capital in the hands of individual citizens," cannot embrace what belongs to corporate bodies, for this language is used for the express and sole purpose of distinguishing such capital from that held by corporate bodies. "Individual citizens" was intended, and solely intended, to describe a class of proprietors other than corporate bodies. The phrase does not admit of construction because it does not admit of any question.

The use of the word "*other*" at the beginning of the

phrase under interpretation, may be thought to *imply* that shares of corporate stock are moneyed capital in the hands of individual citizens, and that our interpretation gives no significance to this word. But, though under our interpretation this word might well enough have been omitted, yet its introduction is quite explicable. The framers of the statute had determined that these shares might be treated for the purpose of taxation *as if they were* moneyed capital in the hands of individuals, and they wished to select as a safeguard against possible discrimination some class of property. It seemed most appropriate to select other property of like character, that is of a character similar to that to which, for the purposes of the matter in hand, they had *assumed* such shares to belong. The penman of the statute, instead of dismissing, as he should have done, this assumption from his mind while framing his discription of the class of property which should form the criterion, retained it, and the use of the word "*other*" was the natural consequence.

It will be observed that the opposite interpretation allows no meaning to the words so industriously introduced "in the hands of individual citizens," for if shares of stock are moneyed capital in the hands of individual citizens, *all* personal property, of whatever description, is in such hands, and the use of the words effects no limitation or qualification whatever. There is no personal property which is not in the hands either of individual citizens or corporate bodies.

Perhaps it may be argued that Congress, in allowing taxation of the shares of national banks viewed the *interest of the shareholder* as being in his hands, and also as being moneyed capital, and consequently intended that the *interest of the shareholder* in the corporate property of all corporations, distinct from the interest of the corporation itself, should be regarded in like manner as moneyed capital in the hands of individuals and forming part of the description of property selected as the criterion. If this highly

artificial view of the probable intent of the framers of the statute be deemed worthy of serious refutation, it will be enough to say that the taxation of the shares of national banks in the hands of the shareholder stands upon entirely different grounds from the taxation of shares in other corporate bodies. In both the interest of the shareholder and that of the corporation are *technically* distinct, and the taxation of both would not *technically* be double taxation. But in corporations other than national banks, these two interests, although technically distinct, are substantially *identical*, and the taxation of both would be double taxation. In the case of national banks, however, a taxation of their capital, if limited to the value of their property, would not embrace every interest justly taxable. The *new use* of their Government bonds, substantially equivalent to a perpetual loan without interest—in other words a gift—of ninety per cent. of the value of the bonds is a property right which only those corporations could exercise, and is a proper subject of taxation. It is this new use which, as this Court has distinctly held (Van Allen *vs.* The Assessors, 3 Wall., 573), supports the taxation by the States of the shares. No corresponding *new use* of property is acquired by corporate bodies in general. To tax these shareholders without at the same time removing the tax on the capital of the corporate bodies would be nothing less than double taxation. It could not have been the intention of Congress to require, or even sanction, this form of injustice. (Tennessee *vs.* Whitworth, 117 U. S., 129.)

A further circumstance tending strongly to show that Congress did not intend that shares of corporate stocks generally should be treated as moneyed capital in the hands of the holders is that in the act of 1864, which first contained the language we are interpreting, and which is therefore to be especially considered in determining its meaning, attached a second condition, namely "that the tax imposed under the laws of any State "upon the shares of any of the associations authorized

"by this act, shall not exceed the rate imposed upon the "shares in any of the banks organized under the authority "of the State where such association is located" (Stats. of 1864, p. 112). This condition would have been superfluous had the framers of the statute supposed they had included shares in corporate bodies under the phrase "moneyed capital in the hands of individual citizens."

This second condition was indeed abrogated by Congress in 1868. But this was not for the reason that its original insertion was superfluous or nugatory; but because State banks had become so limited in number that the condition had ceased to have sufficient practical value; and also perhaps because the occasional exemption for special reasons of state banks from taxation created an uncertainty as to whether the shares in national banks could nevertheless in such cases be taxed (Lionberger *vs.* Rouse, 9 Wall., 468.)

It should constantly be remembered that Congress in imposing the condition under discussion was seeking to contrive a safeguard against a possible unfriendly discrimination by the States. The obvious method of securing this end was to prescribe that the taxation should not exceed that which the State in its ordinary policy imposed upon other property. It would not, however, have been wise to make the tax imposed upon other property generally the criterion; for different States pursued different methods of policy upon the subject of taxation, taxing one species of property in one way, and another in another, and sometimes subjecting some descriptions to heavier burdens than others, and again exempting some descriptions from all burdens. Hence it would have often been extremely difficult to determine what really was *the rate of taxation* to which property generally was subjected. The better policy was evidently thought to be to select some description of property sufficiently large in amount to furnish a fair criterion and at the same time of such a nature that no exemption of it from taxation could be made without giving ground for the inference that an

unfriendly discrimination was intended. The description "moneyed capital in the hands of individual citizens" defines a class excellently well adapted for the purpose. It is property *of the same kind* as that which Congress intended to allow the States to tax, and the burden upon each ought to be the same. It is property which no just state policy should *exempt* from taxation. It embraces a vast amount of property, so large indeed that no State could *afford* to discriminate in its favor, for any such discrimination would involve the imposition of a heavier burden upon, not only the shares of banks, but other property interests having no national relations, which would not submit to such an inequality.

3. The views above mentioned are in accord with judicial decisions so far as the question has as yet been made the subject of discussion.

(*a.*) The question arose in the case of The People *against* The Commissioners, 4 Wall., 244. The general contention in that case of the appealing banks was that in the assessment of the shares of national banks against the shareholders, deductions should be allowed for any national bonds in which any part of the capital had been invested.

These appellants made the following point (p. 248).

"III. In making the assessment, the Commissioners "discriminated against the shareholders of national "banks, and in favor of insurance companies and indi- "viduals, by refusing to make to the former the same "allowance which is made to the latter on account of in- "vestments in United States securities, and have thus "assessed 'such shareholders at a greater rate than "'is assessed upon other moneyed capital in the hands "'of individual citizens' in violation of the act of Con- "gress above referred to."

This point proceeds upon the implied assertion that the capital of insurance companies is moneyed capital in the hands of the shareholders, just as much as the capital of national banks is moneyed capital in the hands of their shareholders, and that if a deduction should be made in the assessment against insurance companies equal to the amount of capital invested in Government bonds, a like deduction should be made in the case of the assessment of shares in National banks. But this Court thought otherwise, and said, through Mr. Justice Nelson (p. 257). "The answer is that this "clause does not refer to the rate of assessments against "insurance companies as a test by which to prevent dis- "crimination against the shares; that is confined to "the rate of assessments upon moneyed capital in the "hands of individual citizens. These institutions are "not within the words, or the contemplation of Con- "gress; but if they were, the answer we have already "given to the deduction of these securities in the "assessment of the property of individual citizens is "equally applicable to them, etc."

Unless it be thought that the mention of alternative grounds in the above citation prevents this decision from being an absolute one upon either, it is a determination that shares in corporate bodies generally are not capital in the hands of individual citizens.

Moreover, the Court in another part of its opinion in this case, points out that this language marks out a *certain description* of property as a criterion, and that such description intentionally excludes corporate property. It says: "This rule seems to be as effectual a test to prevent "unjust discrimination against the shareholders as could "well be devised. It embraces a class which constitutes "the body politic of the States, who make its laws and "provide for its taxes. They cannot be greater than the "citizens impose upon themselves" (p. 256). Surely the Court did not mean by this language to imply that corporate capital could be deemed capital in the hands of individual citizens within the meaning of Congress.

(*b.*) In Hepburn *vs.* The School Directors (23 Wall., 480), the precise question was whether in the assessment of the shares in a national bank by Pennsylvania they could be valued at a greater sum than *par*, it appearing that money put out at interest was assessed only at par, and it was insisted by the appellant that "moneyed capital in the hands of individuals" meant private investments other than in stocks and securities.

The decision seems to have been distinctly placed upon another point; but the Chief Justice, in giving the opinion of the Court, said:

"We cannot concede that money at interest is the "only moneyed capital included in that term as here "used by Congress. The words are 'other moneyed "'capital.' That certainly makes stocks in these banks "moneyed capital, and would seem to indicate that other "investments might be included in that descriptive term.

It will be observed here that the learned Chief Justice limits his scrutiny of the language of the Congressional requirement to the apparent significance of the words "other moneyed capital." Had the subject been fully discussed, he would perhaps have perceived that the use of the word "other" did not really imply that shares in National banks were *in fact* moneyed capital *in the hands of individuals*; but only that Congress was treating them *as if they were*; and consequently, that there would be no ground for the implication that corporate shares of other descriptions were moneyed capital in the hands of individuals. But plainly here was no *decision* and little discussion. No reference appears to have been made to the decision in The People *vs.* The Commissioners (*supra*), where the contrary seems to have been decided.

(*c.*) The question arose in the U. S. Circuit Court for the Northern District of New York, in the case of The First National Bank of Utica *vs.* Waters, 19

Blatch., 239. Mr. Justice Wallace expressed the view that the language "other moneyed capital in the hands of individual citizens," meant such money as is usually employed in private banking and excluded shares in corporate bodies.

(*d.*) In the case of Evansville Bank *vs.* Britton (105 U. S., 322), the meaning of the language in question was briefly adverted to by Mr. Justice Miller in giving the opinion of the Court. He said:

"The act of Congress does not make the tax on "personal property the measure of the tax on the "bank shares in the State, but the tax on moneyed "capital in the hands of the individual citizens. "Credits, money loaned at interest, and demands "against persons or corporations are more purely "representative of moneyed capital than personal "property so far as they can be said to differ. Un- "doubtedly there may be much personal property "exempt from taxation without giving bank shares a "right to similar exemption, because personal prop- "erty is not necessarily moneyed capital; but the "rights, credits, demands and moneyed interest "mentioned in the Indiana statute, from which *bona* "*fide* debts may be deducted, all mean moneyed cap- "ital invested in that way" (p. 324).

This seems to draw the general distinction herein insisted upon, although it does not in terms exclude shares in corporate stock from the denomination of moneyed capital in the hands of individuals.

(*e.*) In the case of Boyer *vs.* Boyer (113 U. S., 689), the question as to the precise import of this phrase might have been raised, argued and determined; but neither seems to have been done. Mr. Justice Harlan, in pronouncing the opinion of the Court, says:

"Before examining the statutes of Pennsylvania "upon the subject of taxation, it may be well to as- "certain how far the decisions of this Court have "fixed the true meaning of the words 'at a greater "rate than' is assessed upon other moneyed capital "in the hands of individual citizens of such State.'" But this inquiry includes another question than the one which we are discussing, namely, *the rate of taxation*, and in prosecuting it that learned judge does not at all consider what the phrase we are discussing does mean. In considering, however, what exemptions from taxation Pennsylvania had made in order to determine whether that State had made a discrimination not allowed by the act of Congress, he apparently takes into view *all personal property* including shares in corporations.

But as no attempt was made by him to determine the precise meaning of the phrase "other moneyed capital in the hands of individual citizens," and no reference made to the prior decision in The People *vs.* The Commissioners, 4 Wall. 244, or to what had been said by Mr. Justice Miller in the case last above cited, we are not to regard this decision as meaning anything more than that the demurrer (the questions arose upon demurrer) admitted such extensive and general exemptions of *personal property including moneyed capital* as to make out, in the absence of denial or explanation, a discrimination such as Congress intended to guard against.

It will be observed that it appeared in Boyer *vs.* Boyer, that not only were shares in corporate bodies exempted from taxation, but the capital of the corporations also, so far as respects county purposes; and also very large amounts of moneyed capital which was without question in the hands of individual citizens.

So far, therefore, as this Court has undertaken to put an interpretation upon the language under dis-

cussion, shares of corporate stocks generally are excluded from the denomination of "moneyed capital in the hands of individuals."

The interpretation of this phrase is made very simple and clear by regarding the word "other" as qualifying "moneyed capital" and not the remaining words, "in the hands of individual citizens."

4. But if shares of stock in corporate bodies should be regarded as falling under the description of "moneyed capital in the hands of individual citizens," the complainant's allegation in respect to them is wholly unfounded; for though *in form* not subject to taxation, they are so subjected in every substantial sense, and in every sense which is material to the present inquiry.

(*a.*) It is important at this point to clearly understand the system of corporate taxation in the State of New York. Stock corporations, long prior to the passage of the National Bank Act, were subjected to taxation upon the actual value of their capital stock; and the mode of assessing this value was to ascertain by sales of the shares in the market, or otherwise, what the actual value was, and then to multiply that value by the whole number of shares, which thus produced a subject of taxation precisely corresponding in amount with the aggregate value of all the shares in the hands of the shareholders. In this way the actual value of the property of the corporation *with all accumulations* is reached. A few unimportant exceptions to this rule designed to cover the cases of unprosperous enterprises which earn no profit on their capital need not be noticed. State banks are another exception, but the shares in these are taxed in

precisely the same manner and to the same extent as shares in the National banks.

N. Y. R. S., part I., ch. XIII, tit. 4.

Laws of N. Y., 1853, ch. 654, p. 1240.

Laws of N. Y., 1857, ch. 456, vol. 2, p. 1.

Oswego Starch Factory *vs.* Dolloway, 21 N. Y., 449.

The People *ex rel.* The Twenty-third St. R. R. Co. *vs.* Commissioners of Taxes, 95 N. Y., 554.

In 1880 a statute was enacted (Laws of 1880, ch. 542) providing for the levying of taxes upon the "*franchise or business*" of corporate bodies generally, with certain specified exceptions, for State purposes. This tax was declared to be in lieu of all other taxation except that upon real estate, and it was claimed that the prior system of taxing such corporate bodies on their capital was thereby wholly superseded. But the Court of Appeals adjudged that such was not its effect, and held that the new mode of taxation superseded the old only to the extent of taxation for the general purposes of the State and left the old system in full operation for all local taxation—much the heaviest part (The People *ex rel.* West F. I. Co. *vs.* Davenport, 91 N. Y., 574). In 1881 the law was amended in accordance with this decision (Laws of N. Y., 1881, ch. 361, p. 481). At present, therefore, *certain* corporations are taxed upon their franchise or business for State purposes, and on their capital for local purposes; others are taxed on their capital for both State and local purposes, and all, except charities, are taxed on their real estate for both purposes. See also People *vs.* Fire Association of Phil., 92 N. Y., 311.

5. The sufficiency of this taxation of capital invested under corporate forms as a compliance with the condition

imposed by Congress can be disputed in two ways only:

First—**By showing that this condition absolutely requires taxation of the shares against the shareholders, and that no other *form* of taxation, however complete an equivalent it may be, will answer as a substitute.**

Second—**That such taxation of the capital of the corporations is not in fact an equivalent.**

Neither of these propositions can be sustained.

(*a.*) The first imputes to Congress a regard for *form* rather than *substance;* and the highly improbable intent of revising the various methods of taxation which the varying policies of the different States had adopted and compelling unison upon a particular method.

There is no reasonable ground for believing that Congress had any such purpose. It is contrary to its uniform policy. That policy had always been to leave the States in the unembarassed direction of their own concerns.

(*b.*) It is an undeniable fact that, in general, the result of taxation is precisely the same whether the *same amount of tax* is paid in the first instance by a corporate body in the shape of an assessment upon the *actual value* of its capital stock, as measured by the market price of the shares, and then charged to and collected from the stockholders, as it must be, either by assessments or deduction from the fund applicable to dividends; or directly collected from the shareholders by assessments proportioned to the amounts of stock held by them. In either case the actual capital of the corporation with all accumu-

lations is fully taxed and the whole of the actual burden is really borne by the stockholders.

Congress could not have been ignorant of this, nor of the circumstance that the former method was adopted in many of the States, including New York. Had it entertained the purpose of changing this method, it would have manifested its intention in express and unequivocal language. And surely it could not have supposed or intended that in those States where corporate capital was assessed against the corporation to require another burden equal in amount to be laid upon the shareholders.

The reasonable view of the intent of Congress was that while permitting the States to follow those methods which they might approve, they should yield a substantial compliance with the condition which it had formed as a safeguard against discrimination. Indeed, it is not unreasonable to suppose that the object in selecting property in the hands of individual citizens as a criterion was partly to avoid the possible doubts which might arise, if corporate capital was included whether an assessment in some particular form was not requisite—the very doubts we are now dealing with.

And the provision in the 41st section of the Banking Act of 1864, which did require an assessment of the shares of State banks in the hands of shareholders may be again referred to here, as significant evidence that such assessment was not requisite in respect to other corporate stocks.

(c.) The second above-mentioned objection has already, in part, been refuted. But let it be repeated that the assessment of the capital stock against the corporation, when made according to the method adopted by the State of New York, must always produce the same result in respect of the point of

discrimination as if the assessment were upon the shares in the hands of the shareholders.

The assessment of the capital stock of the corporate body at its actual value by multiplying the nominal or par value of the shares by their actual values as ascertained by market price where this is possible, and where not, by such other modes of arriving at actual value as are available, must give the same value as a direct assessment of the shares in the hands of the shareholder; for it includes not only the original value of the capital contributed, but also any accumulated profits, any value the corporate franchise may have, and any *new use* which the corporate capital may enjoy by virtue of the privilege of incorporation.

(*d.*) But the complainants in the Court below did adduce one argument tending to show that the taxation of the capital of the corporations was not an equivalent of the taxation of the shares. It was this: That in the assessment against the corporation certain deductions were made, and that *all* such deductions were not allowed in the New York Statute for assessing shares in National banks. Let the precise force of this argument be presented. In the assessment under the laws of New York of the stock of corporations the following deductions are allowable:

1. Assessed value of real estate (this being otherwise taxed).

2. For any shares owned by the corporation of stock in other New York corporations (shares in such corporations not being taxable as such).

3. United States securities.

4. The amount of its own stock belonging to the State or to literary or charitable institutions.

Of these deductions the first, that relating to real estate, is allowed in the assessment of shares in

national banks. The second and fourth may be disregarded for the reason that there is no proof or finding as to the amounts, and the amounts are probably inconsiderable. The complainants did not in the Court below, make any point as to these items.

This leaves the Government securities alone for consideration; and the complainant's position is, that as in the assessment of the shares in the banks they are *not* deducted and *are* deducted in the assessment of the capital of corporations, the latter form of assessment is not an equivalent for the former.

But what do the complainants mean by this argument? It would seem that they meant that the taxation should, in order to produce the requisite equality, be shifted from the capital of the corporation to the shares in the hands of the shareholders, *without any deduction for Government bonds*; but do they suppose for a moment that this method would not at once be pronounced illegal as being an indirect tax on government securities? If, however, they do not mean this, they must mean that after the tax is shifted to the shares the same deduction must be made, which would instantly reproduce the same inequality of which they now complain!

(c.) It may be argued that if the taxation of the shares of corporations generally would operate as an indirect taxation of Government bonds, unless a deduction for these were permitted, it would follow that the taxation of the shares of national banks, without provision for such deduction, is equally an indirect taxation of Government securities. And so it would be but for a single consideration. The argument is not new, nor is it likely to be ever again presented with the force with which it was urged by Mr. Chief Justice Chase in his dissenting opinion in Van Allen *vs.* The Assessors (*supra*). The answer to it is that

contained in the judgment of the Court in that case. It is that the shares are a different species of property from the capital of the corporation, so that a tax upon the shares is not technically upon the capital of the corporate body. This furnishes a solid *technical* foundation for the tax. Its *moral* foundation lies in the circumstance that the shares represent a great deal more than the money contributed as capital, namely, the *new use* to which that capital can be applied by being invested in Government bonds, and thus made the basis of issuing ninety per cent. of the amount of the bonds in money; and in the further circumstance that Congress *intended* that the shares should be taxed *without* any deduction on account of Government bonds.

(*f.*) What the complainants are really insisting upon is that in the taxation of the shares of national banks and of corporate capital, United States bonds, if deducted in the one case, should also be deducted in the other, and if not deducted in the one, should not be in the other.

But why do they limit their objection to the inequality thus alleged to arise between the treatment by the State of shares in the National banks, and of *corporate* capital? Precisely the same inequality, if it be such, exists between the treatment by the State of shares in the national banks and all other confessedly moneyed capital in the hands of *individuals*, such as money itself, bills and notes, bonds and other forms of money loaned. We might as well say that the congressionnal safeguard against discrimination requires that in the assessment of such moneyed capital of an individual, Government bonds should be included, as in the assessment of corporate capital. And the only reason why the point is not made is that its absurdity would be at once apparent. But

when it is said that the State of New York discriminates when she taxes corporations on their capital instead of individuals on their shares, for the reason that Government securities are not deducted under that form of assessment, it is precisely the same point that is raised, the only difference being that its absurdity is disguised.

The answer to this objection, in whatever form stated, is that this inequality, be it real or fanciful, was *deliberately and intentionally enacted by Congress.*

Allen *vs.* The Assessors, *Supra.*

Tennessee *vs.* Whitworth; 117 U. S., 129, 135.

(*g.*) This precise question has before been presented to this Court, and the complainant's view of it rejected almost with contempt. The principal question decided in Van Allen *vs.* The Assessors (3 Wall., 573), was that Congress *intended* to permit the States to tax the shares of National banks at their actual value without regard to the fact that the whole or a part of the capital of such banks might be invested in United States bonds. After this decision the case of The People *vs.* The Commissioners (4 Wall., 244) was brought to argument in this Court. It was, like the former, a New York case, and arose under the same legislation. Really, the case of Van Allen *vs.* The Assessors had determined the only point properly raised by it, but very astute counsel for the banks sought to avoid the direct force of that decision by presenting the question in this form:

"III. In making the assessment the Commissioners discriminated against the shareholders of National banks and in favor of insurance companies "*and individuals* by refusing to make to the former "the same allowance which is made to the latter on "account of investments in United States securities,

"and have thus assessed such shareholders at a "greater rate than is assessed upon other moneyed "capital in the hands of individual citizens, in vio- "lation of the Act of Congress above referred to" (4 Wall, 248).

This is the precise argument of the complainants here when they assert that a tax on the capital of corporate holders is not the equivalent of a tax on the shares for the reason that in the former case there is a deduction of Government securities. But in the case referred to the appealing banks with logical consistency made the deduction of Government securities from the assessments against *individuals* for such moneyed capital as bonds, etc., a ground for the same objection.

Mr. Justice Nelson, in giving the opinion of the Court, points out in the first place that the refusal of the Commissioners to deduct the United States securities from the assessment of the shares in the banks was right, because, as the Court had decided in Van Allen *vs.* The Assessors, that was the purpose and effect of the law.

He next considers the point made by the banks that the assessment was illegal because the Commissioners in assessing individuals *did* make deductions for United States securities. And this he said was right for the reason that Congress in prescribing that the rate of taxation upon such shares should not exceed the rate imposed upon other moneyed capital in the hands of individuals must, of course, have intended only such other moneyed capital *as was assessable*, and could not therefore have meant that Government bonds should be regarded. The learned Judge then exposes the absurdity of the view thus gravely presented to the Court, in this merciless fashion: "The argument is a singular one. "* * * if it proves anything, (it) proves that "these securities should have been taxed in the

"hands of individuals to equalize the taxation; and "hence that Congress by this clause in the proviso, "intended to subject them, as thus situated to taxa- "tion; and therefore there was error in the deduc- "tion. This we do not suppose is claimed. But if this "is not the result of the argument, then the other con- "clusion from it is, that Congress required that the "Commissioners should deduct the securities, and "at the same time intended the deduction, if made, "should operate as a violation of the rate of the tax "prescribed. We dissent from both conclusions, and "think a sound construction of the clause, and one "consistent with its words and intent, is also con- "sistent with all the acts of Congress on the sub- "ject."'

Turning then, to the other phase of the objection, that insurance companies were allowed deductions for Government bonds on the assessment against them, the learned Judge says:

"The answer is that this clause does not refer to "the rate of assessments upon insurance companies "as a test by which to prevent discrimination against "shares; *that* is confined to the rate of assessments "upon moneyed capital in the hands of individual "citizens. These institutions are not within the "words or the contemplation of Congress; but even "if they were, the answer we have already given 'to "the deduction of these securities in the assessment "of the property of individual citizens is applicable "to them. These companies are taxed upon their "capital, and not on the shareholder, at the same "rate as other personal property in the State."

(*b.*) It follows from the above that the circumstance that in the taxation by New York of the capital of corporate bodies, deductions are made for United States securities instead of being a discrimination

by that State against the holders of shares in National banks is precisely what Congress intended, when it gave permission to the States to tax the shares in such banks without diminution on account of the whole or part of their capital being invested in such securities.

Indeed, if there is any discrimination at all in this mode of taxing corporate capital it is *in favor* of the holders of shares in National banks, and *against* the holders of shares in other corporations; for the former are allowed to *deduct their debts* from the assessments of their shares, while the tax is in effect exacted from the latter without any such deduction. The tax on corporate capital to the amount of $755,000,000, mentioned in the record, is exacted without deduction for the debts of the owners of the shares, while the owners of shares in National banks are permitted to make it. If any account were sought to be made of the circumstance that in the *assessment* of corporate capital against corporate bodies, deductions are allowed for exempted property other than United States securities, it would be far more than counterbalanced by this very substantial advantage enjoyed by the shareholders in the banks.

Fifth Point.—There is really nothing left of the complainants case after the discrimination alleged to be brought about by the system of corporate taxation is disposed of. The complainants themselves have hitherto so conceded; for in their brief in the Court below they stated that it was "*in fact by reason of this very result of the two systems of taxation* (namely, that U. S. securities were deducted in the assessment of corporate capital and not in assessment of the bank shares), *that this case has been brought before the Court.*"

But the other alleged exemptions by which the complainants seek to make a formidable aggregate should not, nor should any of them, be taken into the account. They are either not exemptions at all, or partial and incidental, and for that reason not material, or made in pursuance of views of public policy which Congress did not intend to discountenance.

I. The first in order of these remaining items is the life insurance companies. From the fourth article of the agreed statement of facts it appears (Record, fol 57) that the actual value of the aggregated shares of the stock companies was $3,540,000, and the actual value of all the personal property of the stock and mutual companies, taken together, was $195,257,305. This is claimed as an exemption of "moneyed capital in the hands of individual citizens." This item should not be taken into the account for several distinct reasons.

1. It is not "moneyed capital in the hands of individual citizens."

(*a.*) So far as it is moneyed capital at all, it is in the hands of corporate bodies. In respect to *stock* companies, the point has already been argued. In respect to *mutual* companies, which own all but a small part of insurance property, there can be no pretence that their moneyed capital is in the hands of individual citizens. The supposed implication contained in the word "other" before "moneyed capital" in section 5219 R. S., to the effect that *shares* in corporate bodies are moneyed capital in the hands of individ-

uals is wholly wanting here, for there are no *shares* in mutual companies.

(*b.*) So much of this $195,000,000 as consists of *stocks* is, as has already been shown, not moneyed capital at all. Certainly *some* of it appeared by Exhibit "B" to consist of stocks, and possibly a large part of it is so made up.

2. There is nothing in the statement of facts to show that this form of property is exempted to any extent

(*a.*) To prove this alleged exemption, the complainants rely on chap. 534 of the Laws of N. Y. of 1880 (p. 754), which imposes a tax on the corporate franchises or business of one per cent. on the gross amount of their income, including premiums, interest and rent, for State purposes.

There is nothing to show that this tax is not fully equal to, and perhaps greater than, the burden imposed upon the shareholders of national banks. The complainants have procured no finding, nor even offered any evidence to show what the gross amount of such income is. They allege *discrimination*. The burden is upon them to show it.

If the Court is expected to indulge in conjecture, recourse might be had to the exhibition, made by The Equitable Life Assurance Society of New York in its report in 1884 (N. Y. Ass. Doc., 1885, vol V., Nos. 43–67). The gross income of that Company for one year from the sources above indicated, was upward of $15,000,000 upon which a tax of $150,000 would be payable.

Nor is this the whole amount of taxation to which such companies are subjected. The language of the

clause in the law above-mentioned, exempting the companies from other taxation except that imposed as above-mentioned, is precisely similar to the exempting clause in the general corporation tax act of that year which has been already referred to, and therefore falls within the decision in the case of the People *ex rel* West. F. I. Co. *v.* Davenport (91 N. Y., 574.) Consequently this tax on *gross* income does not supersede the tax imposed on such companies prior to 1880, except in respect to *State purposes*, leaving them subject to the prior tax for all local purposes.

This prior tax was so far as stock companies are concerned, the same as that imposed upon other stock companies, and in respect to mutual companies it was upon an assumed capital of $100,000. They were not permitted to begin business until a cash capital had been paid in, amounting to $100,000, and they were taxed for personal property upon a supposed cash capital arbitrarily limited to that sum.

Laws of New York, 1849, ch. 308, p. 441.
Laws of New York, 1853, ch. 469, p. 930.
Laws of New York, 1855, ch. 83, p. 122.

(*b.*) The complainants refer to section 4 of chap. 456 of the Laws of 1857, as exempting the moneyed capital of life insurance companies. This section is in these words:

"Sec. 4. The deposits in any bank for savings "which are due to depositors, and the accumulations "in any life insurance company organized under the "laws of this State, so far as the said accumula- "tions are held for the exclusive benefit of the "assured, shall not be liable to taxation other than "the real estate and stocks which may be owned by

"said bank or company and which are now liable to "taxation under the laws of this State."

This section only exempts the companies from such taxation as might otherwise be imposed upon them. The title of the act shows that it is applicable only to corporate bodies. It does not exempt *any property* from taxation, but only corporate bodies in respect of the property named. And it applies only to *mutual* companies; for these alone hold accumulations for the exclusive benefit of the assured. And it exempts only "accumulations held for the exclusive benefit of the assured." What are these? The complainants do not undertake to give us any information on this point. They tell us that *all* the life insurance companies taken together hold $195,000,000 of personal property; but how much of this is "accumulations held for the exclusive benefit of the assured" we are not informed. But what the "complainants mean to suggest is that this $195,000,000 should be assessed against these companies just as if they were the owners of it *without any obligations arising out of such ownership*. But this would be a wholly unjust method of taxation. The whole policy of New York in the assessment of personal estate seeks only to assess against the owner the excess over his debts. In the case of individuals a direct deduction is allowed for debts. In the case of stock corporations an exact equivalent is allowed; for assessing capital at its *actual value* always effects a deduction of the corporate debts.

Any just assessment of the personal estate of life insurance companies, if no mitigation of the burden of taxation were allowed to them out of motives of policy, would provide for a just representation of their enormous liabilities in the shape of an actual indebtedness.

Were this done and the amount subtracted from the

$195,000,000. the residue would be found comparatively small, and the one per cent., of their gross receipts which is exacted from them under the franchise and business tax act would be found to be, of itself, a heavy tax, not to mention the tax on their real estate.

Whether this residue would exceed the sum of $100,000, upon which they are now taxed, (besides the tax of one per cent., on gross income, and on real estate), does not appear by the agreed statement, nor do the complainants furnish any light or information.

(c.) If there were any findings or proof showing that since the law of 1880, the burden of taxation upon life insurance companies was less than that imposed upon the shares in national banks, it would be in consequence of the low rate of assessment under the law as it stood prior to that year. Life insurance is of recent growth, comparatively speaking. It is a business which, especially when conducted under mutual forms, bears great similarity in its nature and effect upon the habits, welfare and prosperity of a community to that of banks for savings; and the same policy which advises the encouragement of the latter by relieving them in some degree or wholly, from the public burdens sustains a like indulgence to the former. This policy was acted upon by New York down to the year 1880, when the indulgence was largely moderated, probably in view of the known fact that life insurance was resorted to to a considerable extent by classes of the community in respect to which an encouragement of the practice of saving was not so necessary.

If the State of New York has deemed it a wise policy to encourage this form of saving by moderating,

to some extent, the burden of taxation upon life insurance companies, this Court will not deem it a discrimination hostile to the National banks.

II.—The next item of alleged exemption is the capital stock of trust companies, which appears by the fifth item of the agreed statement (Record, fol. 57), to be $32,018,900. But trust companies are taxed upon their capital stock in the same manner as corporations generally, and there is no reason why they should receive any separate consideration. The preceding argument relating to corporate stock in general disposes of this item and shows that it should not be taken into the account.

(*a.*) It may be well to refer to the course of legislation in relation to the taxation of trust companies to show that the preceding proposition is correct, although it is understood to be fully acceded to by the complainant's counsel.

Chap. 596, Laws of N. Y., 1880, placed trust companies in respect to taxation in the same category with state and national banks; *i. e.*, made them taxable on the full value of their shares. In 1882, (Laws of N.Y., Ch. 409) a revision of the laws relating to banking was made, and by Sec. 312 of that revision the provisions of of the law of 1880 above mentioned, in respect to taxation were re-enacted except that trust companies were omitted. This, without more, would leave them taxable by the law applicable to them prior to the Act of 1880. But, besides this, Sec. 324 of the revised Banking Act of 1882, expressly made them taxable according the general corporation tax law of 1880, as amended by the Act of 1881. They are, therefore, subject to a tax on their business and franchises for state purposes under

the act last above mentioned, and for local purposes to a tax upon the actual value of their capital stock, like corporations in general.

III. The next item of alleged vicious exemption is that of deposits in savings banks, which is stated in the sixth item of the agreed facts at $437,107,501. There are several quite sufficient reasons why this item should not be taken into the account.

1. These deposits are debts due from the bank to the depositor. The fruits of these deposits in the hands of the bank are represented by the property in which it invests the money deposited. The banks are not stock companies organized for profit, but mere agencies, as it were, for saving and investing the moneys of depositors. The only *capital* in the proper sense of that term which such banks can be said to have, is the *surplus* if any, which they are permitted by law to accumulate. If any individual should undertake such a business he would be permitted, under the law of New York, in any assessment against him of the amounts deposited with him to deduct or offset the sums owed to depositors, which would wipe out the assessment except so much of it as embraced any surplus, unless he had invested some part of the moneys received in real estate as to which no offset would be allowed. This shows that as *corporate bodies* such banks should not, and under the laws of New York, would not be taxed on *capital*, except for a surplus. To subject a corporate body to taxation under the New York system it must appear to be a moneyed or stock corporation deriving *an income of profit from its capital*. (R. E. Part I., Chap. XIII. Tit. 4, § 1.)

But the deposit, like any debt due to a creditor, from a

solvent person is taxable against the *depositor*. And so under the law of New York, at least until the passage of a statute presently to be noticed, all deposits in savings banks were thus taxable. It may very well have been that large amounts of this form of property owned by multitudes of individuals in small sums actually escaped taxation; but this is far from being an exemption by the State.

The notion of the complainants that such deposits have been *exempted* is derived from Sec. 4, of Chap. 456 of the Laws of 1857 (Vol. 2, p. 1). This is as follows: "§ 4 The deposits in any bank for savings which are due "to depositors, and the accumulations in any life insur- "ance company organized under the laws of this State, so "far as the said accumulations are held for the exclus- "ive benefit of the assured, shall not be liable to taxation, "other than the real estate and stocks which may be "owned by such bank or company, and which are now "liable to taxation under the laws of this State."

But we deny that this act operates to exempt such deposits from taxation as against the depositor. It related, wholly, as appears by the title, to "the Assessment of Taxes on Incorporated Companies." Probably efforts had been made to tax such companies directly on account of these deposits; and the statute directly prohibited that. But certainly the individual depositors are not expressly exempted, and whoever asserts that such is the effect of the act must deal with that rather peremptory doctrine which teaches us that an exemption from taxation can be shown only by the unequivocal language of a statute. (Tennessee *v.* Whitworth, 117 U. S., 139; Vicksburg, &c., R. R. Co. *v.* Dennis, 116 U. S., 665).

2. But whether these deposits are exempted by the law from assessment against the depositors or not, it is safe to say that they ought to be. No measure of State policy can be

more unquestionably wise than this, which offers such a powerful stimulus to the making of small savings by the working classes. If it is wise to exempt charitable institutions which offer relief to the destitute, it is still more manifestly wise to exempt from taxation that practice of saving which, more than all things else, tends to reduce the number of the destitute. No such policy surely will ever be regarded as a *discrimination* intended to be discountenanced by Congress.

V.—It appears by the seventh item of the agreed statement that the City of New York had issued $13,467,000 of bonds, which by the provisions of Chap. 552 of the Laws of New York of 1880, were exempt from taxation by that city and county. There is no ground upon which this should be taken into the account of vicious exemptions.

1. It does not appear how much or whether any, of this sum is actually exempted. It is not so exempted unless it is held by some individual or corporation liable to the taxation in the city and county of New York.

2. But let it be assumed that it is all so held. This is an exemption called for by the plainest considerations of State policy. New York City is one of the political divisions of the State, and one of the subordinate governmental agencies. Its debts are but a part of the public debt, and this ought not to be taxed at all.

3. The unsubstantial nature of the case sought to be made out by the complainants is well illustrated in this item. The direct effect and the sole purpose of a law exempting the public debt from taxation is to *diminish* the burden of taxation. But for such an exemption the rate of interest upon such bonds would of course be higher, and the higher rate would make it necessary to raise a greater annual sum by taxation in order to pay the interest, and call for an increased exaction from the holders of shares in the national banks equally with other taxpayers. The diminution of the burden is an advantage shared by all taxpayers with *exact equality*. And yet this nominal exemption is made an item to swell an imposing aggregate designed to show a discrimination against shareholders in national banks.

Adams *v.* Nashville; 95 U. S., 18.

VI.—Another alleged vicious exemption is found in the eighth article of the agreed statement (Record, fol. 58), by which it appears that citizens of the State of New York hold shares in corporations foreign to that State of $250,000,000. Slender indeed is the ground upon which any part of this sum should be taken into the account.

1. If these stocks are not *property* in New York they ought not to be taxed there; and if they are property there, they are not exempted, but are, on the other hand, expressly subjected to taxation. The broad and equal general policy of New York declares "All lands and all personal estate within this State, whether owned by individuals or coporations, shall be liable to taxation, subject to the exemptions hereinafter specified" (R. S., part 1, chap. XIII., title 1, § 1). And such stocks are nowhere stated in any exempting law.

The complainants say that the courts of New York have *decided* that such stocks were not taxable, and refer to the decision in the case of The People *ex rel.* Trowbridge *vs.* The Commissioners (4 Hun, 595). That decision was placed on the ground that such property was outside of the jurisdiction of New York, and *could not* properly be taxed, not that the State of New York had *exempted* it from taxation. It was either wrong or right; if wrong it could probably be reviewed and corrected in the federal courts by parties in the position of the complainants. If right, it certainly furnishes them with no cause of complaint.

2. It was clearly right. The New York system of taxation, in general, aims to impose its burdens upon *property* alone. It assesses corporate bodies indeed upon an amount measured by the *actual value* of the capital stock as ascertained by sales in the market or otherwise. But this method is selected only as a means (and it is by far the most perfect means) of reaching the actual value of of the corporate property, and to make this method just, it exempts the shares from assessment. Adopting this system it should certainly carefully avoid taxing the shares of foreign corporations in the hands of its citizens. They are but the evidences of a right to participate in the income of property situated in other jurisdictions and presumably taxed there. This is the general policy of all states. And if any of them prefer the alternative method of taxing the shares in their own corporations, in the hands of the shareholders, they take the precaution of requiring the corporate body to pay the tax for its shareholders and thus reach the whole body of the property by reaching all the shareholders whether within or without the State. The United States obeys the same principle in requiring that the shares in national banks owned by non-residents of the State in which the banks are located, shall be taxed in the city or town where

the bank is located *and not elsewhere*. Undoubtedly it is in the *power* of a State to tax the capital of a corporate body and its shareholders also. But such a practice, except in those cases where incorporation gives a *new use* to the corporate capital not reached by assessment against it, is in reality double taxation and subject to manifest objection. The method adopted by New York, of assessing the capital by a reference to the actual value of the shares necessarily reaches the franchise, and every possible element of value. It must be manifest that any attempt by one State to exact revenue from property in other States, by taxing the shares of corporate holders of such other States, where it can reach the shareholder, would result in the confusion and injustice of retaliation. There are some observations very pertinent to this topic in a recent decision of this Court.

Tennessee *vs.* Whitworth, 117 U. S., 129, 136.

Sixth Point. There is nothing in the decision of this Court in Boyer *vs.* Boyer (113 U. S.), in any way conflicting with the views herein maintained.

1. Repeated decisions of this Court had established that an exemption of *some part* of moneyed capital in the hands of individual citizens would not establish a fatal discrimination.

Hepburn *vs.* The School Directors, 23 Wall, 480, 485.

2. It had also decided that the criterion "other moneyed capital in the hands of individual citizens," meant only

such other moneyed capital as was *assessable*, and had no reference to such as was properly exempt, and that Congress had no intention of interfering with the policy of States in exempting certain species of property for special reasons.

Adams *vs.* Nashville, 95 U. S B.

3. The foregoing scrutiny of the various pretended exemptions set up by the complainants shows that there is, so far as the agreed facts, or the proofs, in this case go, no moneyed capital whatever in the hands of individual citizens which is exempted from taxation by the State of New York. Indeed it appears that there is no moneyed capital whatever, whether in the hands of individuals or corporate bodies, which is thus exempted. If there is any qualification to be made of the latter statement, it is in respect of property in the hands of the life insurance companies; and as to this we have no knowledge as to the amount, and little reason to believe that if their liabilities were represented by some fair computation in the form of a present debt and as such deducted from their personal property, and the residue regarded as their taxable personal estate and taxed as such, the amount of the tax would exceed by any considerable sum the amount which is at present exacted from them.

4. Indeed under the broad and comprehensive system of taxation adopted by New York, when fairly executed, no discrimination such as Congress has sought to guard against is possible.

(*a.*) The rule is to subject *all property* to taxation. And the specified exemptions are few in number, comparatively inconsiderable in amount, and only such as are justified by familiar and generally accepted dictates of State policy. There is, indeed, a limited exemption of corporate property from taxation for *State purposes*, which is counterbalanced by a special tax imposed upon them alone, in all respect of their franchise and business, to be applied to such purposes.

(*b*) The universal rule is to assess all this property at its *actual* value;--all real property at such actual value, without deduction for debts, and all personal property at its actual value, after deducting the debts of the owner. The valuation, therefore, is the same.

(*c*) The *rate*, or *percentage*, of taxation upon the value thus ascertained is the same.

(*d*) Under such a system, moneyed capital in the hands of individual citizens or in any other hands cannot escape the exaction except through the neglect or failure of the administrative officers, and for any such *neglect* the laws of the State furnish an unusually ample and effective remedy. A statutory writ of *certiorari* may be prosecuted with effect by any aggrieved party who is able to show that he has been subjected to any *unequal* burden in consequence of his property being assessed at a higher rate than other property on the same roll.
Laws of N. Y., 1880, Chap. 269, p. 402.

5. In Boyer *v.* Boyer, a totally different case was presented The State laws imposing the tax on the shares in the national banks subjected them to two exactions: *first*, one of three mills *per annum* for *State purposes; second*, for county, school, municipal, and local purposes at the same rate, "as now is, or hereafter may be assessed and imposed upon other moneyed capital in "the hands of individual citizens of this State." This statute was construed by the court to mean that the shares in national banks were to be assessed for "county, school, municipal and local purposes" —the bulk of all taxation—at such rates as were then imposed upon such moneyed capital in the hands of individual citizens, *and such only* as was then, or might thereafter be made *subject to taxation*. If any—the smallest amount—therefore, of such moneyed capital was in fact then subjected to this local taxation the burden would at once fall upon the shares; and yet the great bulk of moneyed capital might be allowed to escape the burden.

The case admitted by the demurrer showed the following exemptions from this local taxation:

(*a.*) All railroad bonds or certificates of loans.

(*b.*) Shares of stock of corporate bodies generally, except foreign insurance companies, banks and saving institutions; and not only were the shares thus relieved, but, as we infer, *the corporations themselves were not subjected to any tax on their capital.* In other words there was no equivalent tax imposed on capital to offset the exemption of the shares.

(*c.*) All mortgages, judgments and recognizances, and all moneys due or owing upon articles of agreement for the sale of real estate.

(*d.*) All loans to corporate bodies whether evidenced by corporate bonds or otherwise—a prodigious exemption of moneyed capital.

(*e.*) Well might the court say in the face of these sweeping exemptions of moneyed capital from the

burden of local taxation which was imposed upon the shares in national banks constituted a discrimination fatal to the tax. It was scarcely necessary to inquire how much more or less of this vast aggregate of moneyed capital was "in the hands of individual citizens." Presumably a very material amount of it must have been there.

Lastly.—The decree of the Court below should be affirmed with costs.

JAMES C. CARTER,
Of Counsel for Appellees.

121-138

Supreme Court of the United States.

OCTOBER TERM, 1886.

No. 1258.

THE MERCANTILE NATIONAL BANK OF THE CITY OF NEW YORK,

Appellant,

vs.

THE MAYOR, ALDERMEN AND COMMONALTY OF THE CITY OF NEW YORK, AND GEORGE W. McLEAN, RECEIVER OF TAXES,

Appellees.

MOTION BY APPELLEES TO ADVANCE AND TO ASSIGN DAY FOR ARGUMENT.

STATEMENT OF REASONS THEREFOR.

JAMES C. CARTER,
THOMAS ALLISON,
Counsel for Appellees.

CHARLES W. WELLS,
FREDERICK W. WHITRIDGE,
For Appellant.

NEW YORK:
JOHN POLHEMUS, Printer and Mf'g Stationer, 102 Nassau Street.
1886.

Supreme Court of the United States. 1

OCTOBER TERM, 1886.

No. 1258.

THE MERCANTILE NATIONAL BANK of the City of New York,
Appellant,

vs.

THE MAYOR, ALDERMEN and COMMONALTY OF THE CITY OF NEW YORK and GEORGE W. McLEAN, Receiver of Taxes,
Appellees. 2

In Equity.

Motion for Advancement. 3

The appellees above mentioned now move the Court to advance the said cause upon its calendar, and to set down the same for argument upon some day in February, 1887, to be fixed by the Court.

Statement.

This cause is one of thirty-five brought by the national banks of the city of New York against 4 the municipal authorities of that city. It is a bill in equity, praying for an injunction to restrain the collection of taxes assessed upon the shares of stock of the said banks.

5 The bill raises the question whether or not the system of laws enforced in the State of New York are in opposition to Section 5219 of the Revised Statutes of the United States, which requires that the taxation of the shares of national banks "shall not be at a greater rate than is assessed upon other moneyed capital in the hands of the individual citizens of such State." If the views contended for by the national banks are correct, then the assessments upon the shares of stock of such banks are void, as in conflict with the Act of Congress—otherwise, the en-
6 tire assessment is valid. The entire tax in question for the year 1885 (on account of the taxes for which year the present suit is brought) is considerably over a million dollars.

By a law of New York, Chapter 406 of the Laws of 1882, the bank is obliged to retain "so much of any dividend or dividends belonging to such stockholders as shall be necessary to pay any taxes assessed" upon the shares against the shareholder. The tax is made a lien upon the shares.

7 A preliminary injunction was obtained by the banks, restraining the collection of the tax, which the Court, upon a final hearing, dissolved; immediately after which decree this appeal was taken.

The laws of New York afford no action against the banks for the collection of taxes assessed upon its shareholders for the shares therein; and whether any remedy exists against the banks to recover so much of the dividend as was to be retained by them for the taxes, under the statutes just cited, has never been judicially declared.

8 Pending the present litigation, the banks have refused to pay the taxes, as they have hitherto invariably done for their shareholders, voluntarily, and the taxes of the year 1886 are also in default, something over two millions of dollars being thus involved in this litigation.

The number of persons thus assessed for shares in banks is in 1885, 20,474; in 1886, 19,220. The *legal* remedies existing for the collection of these taxes

from the shareholders would require, therefore, the commencement and prosecution of 39,694 proceedings at law, many of which would ultimately come upon the records of this Court; and should the hearing of this appeal be postponed until the cause is regularly reached upon the calendar, the taxes for three years more would be involved, as well as the corresponding multiplication of litigation. Should, however, the present motion be granted, all this litigation can doubtless be saved, as in the event of a decision against them upon the substantial questions involved in this appeal the banks will voluntarily pay the taxes in the suit.

The amount of money involved in this litigation is a very serious one to the finances of the city of New York, and should the present state of things continue until these causes would naturally be reached upon the calendar, the result would be serious embarrassment to the financial operations of that municipality. The total assessment upon realty in 1885 was $1,168,443,137, and of personalty $202,673,866, of which latter sum the assessment against shareholders of banks amounts to $60,746,294.

The laws of New York affecting this subject in the city of New York apply throughout the entire State, in which the national bank stock involved is of a par value of $83,054,160. The taxation of such shares in several of the larger interior cities of that State is affected by this litigation, kindred suits having been brought in some of them, refusals to pay exist in others, and suits are threatened in still others. All this creates great uncertainty and embarrassment in the administration of the municipal affairs of the cities and towns in the State of New York.

Further, the suit in question involves a *State* tax. By the laws of New York the State tax levied upon assessments is required to be shortly paid by the county in which the property is assessed, the county looking thereafter to the assessed person for reim-

13 bursement. This is the situation here, and the city and county of New York has paid the State tax assessed upon the valuations of the shares of these banks for both these years, 1885 and 1886. The county has no remedy against the State for its reimbursement should it fail to collect the tax from the shareholder thus assessed, and if this appeal is not advanced the city and county of New York will be obliged to continue to pay to the State the State tax levied upon the assessment of the shares of banks located in that city, and will have no remedy
14 whatever for its recovery other than through the shareholders. Should, therefore, the decision of this Court ultimately be in favor of the banks upon the main questions involved, the city of New York would be without any remedy for a return of a large sum of money, the necessity for the payment of which would not exist should the cause be advanced and the decision be of like character.

We understand that suits exist in other States than New York, involving substantially the same
15 questions as those embraced in the present case, one of which (that of The National Newark Banking Company *v.* The City of Newark), has already reached the dockets of this Court.

Dated New York, December, 1886.

JAMES C. CARTER,
THOMAS ALLISON,
Of Counsel for the Appellees.

16 The Appellant joins in the foregoing motion to advance the appeal, and concurs in the statement of facts above set forth.

CHARLES W. WELLS,
FREDERICK W. WHITRIDGE,
Counsel for Appellant.